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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2009-0002]

Regulation of the Interstate Movement of Lemons from Areas Quarantined for Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the list of regulated articles in our domestic fruit fly quarantine regulations. The regulations have indicated that smooth-skinned lemons (all varieties of *Citrus limon*) harvested for packing by commercial packinghouses are not regulated articles for Mediterranean fruit fly. We are amending the regulations to designate all yellow lemons as regulated articles. This change is based on research indicating that, under certain conditions, yellow lemons are a host for Mediterranean fruit fly. As a result of this action, yellow lemons in an area quarantined for Mediterranean fruit fly will be subject to certain interstate movement restrictions in order to prevent the spread of that pest into uninfested areas of the United States.

DATES: *Effective Date:* April 19, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, APHIS Exotic Fruit Fly Director, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-4387.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world's most destructive pests of fruits and vegetables. The short life cycle of the Medfly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Animal and Plant Health Inspection Service (APHIS) enforces regulations in 7 CFR part 301, "Domestic Quarantine Notices," that are designed to prevent the interstate spread of pests that are new to or not widely distributed within the United States. The regulations in "Subpart-Fruit Flies," contained in §§ 301.32 through 301.32-10 (referred to below as the regulations), are intended to prevent the spread of fruit flies designated as plant pests to noninfested areas of the United States. To this end, the regulations impose restrictions on the interstate movement of articles that are hosts of fruit flies or whose movement could otherwise spread fruit flies from areas quarantined because of fruit flies. We refer to these articles as "regulated articles." The table in § 301.32-2(a), "Regulated Articles," lists articles subject to domestic quarantine regulations for several species of fruit fly, including Medfly.

On September 21, 2009, we published in the **Federal Register** (74 FR 48013-48014, Docket No. APHIS-2009-0002) a proposal[1] to amend the list of regulated articles in our domestic fruit fly quarantine regulations. Lemons (*Citrus limon*) are included in that list as a regulated article for several types of fruit flies, but a footnote to the table has indicated that smooth-skinned lemons harvested for packing by commercial packinghouses are not regulated articles for Medfly. We proposed to amend the regulations to designate all yellow lemons as regulated articles based on recent research indicating that, under certain conditions, yellow lemons are a host for Medfly.

We solicited comments concerning our proposal for 60 days ending November 20, 2009. We received four comments by that date. They were from citrus industry organizations and a State agricultural official. All responses were in favor of designating all yellow lemons as regulated articles for Medfly.

[1] To view the proposed rule, the economic analysis, the scientific review, and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0002*).

Therefore, for the reasons given in the proposed rule, we are adopting that aspect of the proposed rule as a final rule, without change.

We also proposed to amend the treatments regulations in 7 CFR part 305 by updating the list in § 305.2(h)(2)(ii) of approved treatments for regulated articles moved interstate from areas quarantined for fruit flies to correct two outdated references to the fruit fly regulations. However, a final rule published in the **Federal Register** (75 FR 4228-4253, Docket No. APHIS-2008-0022) on January 26, 2010, and effective on February 25, 2010, has rendered that change unnecessary.

Correction to Provisions

In this final rule, we are making another change to the regulations in order to correct an error that occurred when the consolidated fruit fly subpart was established. Specifically, in § 301.32(a), tomato (*Lycopersicon esculentum*) is listed as a regulated article for Medfly, melon fruit fly, Oriental fruit fly, and peach fruit fly. The footnote appended to that entry states that only pink and red ripe tomatoes are regulated articles for melon, Oriental, and peach fruit flies, which means that green tomatoes are not regulated articles for those three fruit flies, while all tomatoes, regardless of the stage of ripeness, are regulated articles for Medfly. The footnote is incorrect. It appears that when we established the regulations, we reversed the status of tomatoes with respect to those fruit flies. Therefore, in this document, we are amending the entry for tomatoes to indicate that only pink and red ripe tomatoes are regulated articles for Medfly, while all tomatoes, regardless of the stage of ripeness, are regulated articles for melon, Oriental, and peach fruit flies.

Executive Order 12866 and Regulatory Flexibility Act

This final rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1

in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

As described in the economic analysis, the majority of producers, importers, and merchants that may be affected by this rule are small entities. The number of producers that may be affected in the future is not known, since we do not have data on production of smooth-skinned lemons harvested for packing by commercial packinghouses. Nonetheless, the costs of any pre-harvest or post-harvest treatments of smooth-skinned lemons required by this rule are negligible. In addition, removal of the regulatory exemption for smooth-skinned lemons harvested for packing by commercial packinghouses will reduce the risk of Medfly spreading from a quarantined area to a non-quarantined area, thereby potentially saving producers control and eradication costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.32-2 [Amended]

■ 2. In § 301.32-2, paragraph (a), the table is amended as follows:

■ a. In footnote 2, by removing the words "Smooth-skinned lemons harvested for packing by commercial packinghouses are not" and adding the words "Only yellow lemons are" in their place.

■ b. By revising the entry for *Lycopersicon esculentum*, including footnote 4, to read as set forth below.

§ 301.32-2 Regulated articles.

(a) * * *

Botanical name	Common name(s)	Fruit fly
* * *	* *	* *
Lycopersicon esculentum	Tomato	Mediterranean,[4] Melon, Oriental, Peach.
* * *	* *	* *

* * * * *

[4] Only pink and red ripe tomatoes are regulated articles for Mediterranean fruit fly.

* * * * *

Done in Washington, DC, this 11th day of March 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–5945 Filed 3–17–10: 11:25 am]

BILLING CODE 3410–34–S

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD55

Transitional Safe Harbor Protection for Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its regulation, Defining Transitional Safe Harbor Protection for Treatment By The Federal Deposit Insurance Corporation As Conservator Or Receiver Of Financial Assets Transferred In Connection With A Securitization Or Participation. The amendment adds a new provision in order to continue for a limited time the safe harbor provision for securitizations that would be affected by recent changes to generally accepted accounting principles. In effect, the Final Rule permanently "grandfathers" all securitizations for which financial assets were transferred or, for revolving trusts, for which securities were issued prior to September 30, 2010 so long as those securitizations complied with the preexisting requirements under generally accepted accounting principles in effect prior to November 15, 2009. The transitional safe harbor will apply irrespective of whether or not the securitization satisfies all of the conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009. In

addition, the Final Rule confirms that section 360.6 will continue to protect participations.

DATES: Effective March 18, 2010, the Board of Directors of the Federal Deposit Insurance Corporation confirms as final with changes, the interim rule published on November 17, 2010 (74 FR 59066) .

FOR FURTHER INFORMATION CONTACT: Michael Krimminger, Office of the Chairman, 202–898–8950; George Alexander, Division of Resolutions and Receiverships, 202 898–3718; or R. Penfield Starke, Legal Division, 703–562–2422, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 2000, the FDIC clarified the scope of its statutory authority as conservator or receiver to disaffirm or repudiate contracts of an insured depository institution ("IDI") with respect to transfers of financial assets by an IDI in connection with a securitization or participation when it adopted a regulation codified at 12 CFR section 360.6 ("the Securitization Rule"). This rule provides that the FDIC as conservator or receiver will not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an IDI in connection with a securitization or participation or in the form of a participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles ("GAAP"). The rule was a clarification, rather than a limitation, of the repudiation power because such power authorizes the conservator or receiver to breach a contract or lease entered into by an IDI and be legally excused from further performance but it is not an avoiding power enabling the conservator or receiver to recover assets that were previously transferred by the IDI in connection with the contract. The Securitization Rule provided a "safe harbor" to permit transfers of financial assets by IDIs to an issuing entity in connection with a securitization or in the form of a participation to satisfy the "legal isolation" condition of GAAP as it applies to institutions for which the FDIC may be appointed as conservator or receiver. To satisfy the legal isolation condition, the transferred financial asset must have been presumptively placed beyond the reach of the transferor, its creditors, a bankruptcy trustee, or in the case of an IDI, the FDIC as conservator or receiver. Since its adoption, the Securitization Rule has been relied on by securitization participants, including rating agencies, as assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver.

Recently, the implementation of new accounting rules has created uncertainty for securitization participants. On June 12, 2009, the Financial Accounting Standards Board ("FASB") finalized modifications to GAAP through Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* ("FAS 166") and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* ("FAS 167") (the "2009 GAAP Modifications"). The 2009 GAAP Modifications are effective for annual financial statement reporting periods that begin after November 15, 2009. For most IDIs, the 2009 GAAP Modifications were effective for reporting periods beginning after January 1, 2010. The 2009 GAAP Modifications made changes that affect whether a special purpose entity ("SPE") must be consolidated for financial reporting purposes, thereby subjecting many SPEs to GAAP consolidation requirements. These accounting changes will require some IDIs to consolidate an issuing entity to which financial assets have been transferred for securitization on to their balance sheets for financial reporting purposes. Given the likely accounting treatment, securitizations could be considered to be an alternative form of secured borrowing. As a result, the safe harbor provision of the Securitization Rule may not apply to the transfer.

FAS 166 also affects the treatment of participations issued by an IDI, in that it defines a participating interest essentially as a pari-passu pro-rata interest in a financial asset and subjects the sale of a participation interest to the same conditions that are imposed on the sale of a financial asset. FAS 166 provides that a transfer of a participation interest that does not qualify for sale treatment will be viewed as a secured borrowing. While the GAAP modifications have some effect on participations, most participations are likely to continue to meet the conditions for sale accounting treatment under GAAP.

The 2009 GAAP Modifications affect the way securitizations are viewed by the rating agencies and whether they can achieve ratings that are based solely on the credit quality of the financial assets, independent from the rating of the IDI. Rating agencies are concerned with several issues, including the ability of a securitization transaction to pay timely principal and interest in the event the FDIC is appointed receiver or conservator of the IDI. Moody's, Standard & Poor's, and Fitch have expressed the view that because of the 2009 GAAP modifications and the extent of the FDIC's rights and powers as conservator or receiver, bank securitization transactions are unlikely to receive AAA ratings and would have to be linked to the rating of the IDI. Because of these uncertainties, securitization practitioners asked the FDIC to provide assurances regarding the position of the conservator or receiver as to the treatment of both existing and future securitization transactions. In response to industry concerns, the FDIC published an Interim Final Rule on November 17, 2010 (74 FR 59066) that addressed securitizations (and participations) issued before March 31, 2010.

II. The Interim Rule

The Interim Rule amended the Securitization Rule by renumbering existing paragraph (b) as clause (b)(1) of paragraph (b). The Interim Rule inserted a new clause (b)(2) of the Securitization Rule that addresses any securitization (i) for which transfers of financial assets were made or (ii), for revolving trusts, for which beneficial interests were issued on or before March 31, 2010. The interim rule provided that, for these securitizations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, if such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the "legal isolation" condition that is addressed by the rule.

III. Summary of Comments Received

The FDIC requested comments on all aspects of the Interim Final Rule. The FDIC specifically requested that commenters respond to the following:

1. Do the changes to the accounting rules affect the application of the Securitization Rule to participations? If so, are there changes to the Interim Rule that are needed to protect different types of participations issued by IDIs more broadly?

2. Does the Interim Rule adequately encompass all transactions that should be included within its transitional safe harbor?

3. Is the transition period to March 31, 2010 sufficient to implement changes required by the Proposed Rule and to structure transactions to comply with the new generally accepted accounting principles?

In response to the request, the FDIC received two (2) comments from industry associations. A summary of the comments received follows.

The American Bankers Association (ABA) and the American Bankers Association Securities Association (ABASA) provided a joint comment letter to the FDIC and one other comment letter was received from the American Securitization Forum (ASF). Both comment letters stressed that loan securitization and participations are important mechanisms that facilitate financial intermediation and the provision of credit and therefore, market participants need to have certainty regarding the treatment of these transactions in a conservatorship or receivership of the issuer.

In specific reference to the first question posed in the interim rule, the ABA/ABASA commented that FAS 166 would prospectively affect the application of the Securitization Rule to participations. Therefore, it is important that the FDIC include participations in the protections afforded by the Interim rule. In addition, the ABA/ABASA suggested that the accounting treatment of a participation should not control its treatment by the FDIC in a receivership or conservatorship of the originating lender.

In response to question #2, the ABA/ABASA responded that it is possible that the changes to GAAP might impact other types of variable interest entities and other entities, such as pooled funds and joint ventures. Participations or securities held by these entities may be consolidated and recorded on bank balance sheets under certain circumstances and therefore, such entities should also be protected under the final rule. Participations are protected under the final rule's transitional safe harbor until September 30, 2010 to the extent that they would have received sale accounting treatment but for the GAAP Modifications. The FDIC will be addressing whether other types of entities should receive protection under the safe harbor in a separate rulemaking (*see* Advanced Notice of Proposed Rulemaking Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After March 31, 2010, 75 FR 934, January 7, 2010).

In response to question #3, both the ABA/ABASA and ASF commented that the permanent grandfathering of securitization and participation issuances in process through March 31, 2010 does not provide an adequate period of time for issuers to adapt to new regulatory requirements relating to the securitization process, particularly if changes to the terms of the transactions are necessary. The ASF suggested that the grandfathering period be extended for another 12–18 months after March 31, 2010.

In light of the comments received, the FDIC has decided to extend the transitional safe harbor until September 30, 2010, so long as those securitizations and participations issued would have complied with the preexisting section 360.6 under generally accepted accounting principles in effect prior to November 15, 2009.

IV. The Final Rule

The Final Rule amends the Securitization Rule by renumbering existing paragraph (b) as clause (b)(1) of paragraph (b). The Final Rule inserts a new clause (b)(2) of the Securitization Rule that addresses any securitization (i) for which transfers of financial assets were made or (ii), for revolving trusts, for which beneficial interests were issued on or before September 30, 2010. The rule provides that, for these securitizations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, if such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the "legal isolation" condition that is addressed by the rule.

V. Regulatory Procedure

A. Administrative Procedure Act

The Administrative Procedure Act ("APA") provides that general notice of a proposed rulemaking shall be published and that interested persons shall have an opportunity to participate in the rulemaking by submitting written data, views, or arguments, except where the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The FDIC has previously solicited and received comments regarding the Interim Final Rule. The FDIC for good cause finds that notice and public procedure with respect to this Final Rule would be impracticable, unnecessary, or contrary to the public interest because the 2009 GAAP Modifications become effective as of the financial reporting period starting on or after November 15, 2009 and retroactively apply to existing securitizations. The FDIC believes that it is in the best interest of the U.S. banking industry and economic for the FDIC to provide assurances with respect to the treatment of existing securitizations that will be affected by the 2009 GAAP Modifications.

The APA also provides that publication of a substantive rule shall be made not less than 30 days before its effective date except as otherwise provided by the agency for good cause found and published with the rule. Because of the retroactive application of the 2009 GAAP Modifications and the immediate need for assurances for securitization participants and the banking industry with respect to existing securitizations and participations, the FDIC invokes this good cause exception to make this Final Rule effective as of March 18, 2010.

B. Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (CDRIA) requires that any new rule prescribed by a Federal banking agency that imposes additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter. 12 U.S.C. section 4802. This requirement does not apply because the Final Rule does not impose additional reporting, disclosures, or other new requirements on insured depository institution.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq.*), it is certified that

the Interim Rule will not have a significant economic impact on a substantial number of small business entities. The Final Rule merely extends the safe harbor of section 360.6(b) to securitizations issued before September 30, 2010 and does not represent a change in the law.

E. Small Business Regulatory Enforcement Fairness Act

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

F. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. section 3501 *et seq.*) is contained in the final rule. Consequently, no information was submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation confirms as final, the interim rule amending chapter III of title 12 of the Code of Federal Regulations by amending Part 360 published on November 17, 2010 (74 FR 59066) with the following changes:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

■ 2. Amend § 360.6 by revising paragraph (b)(2) to read as follows:

§ 360.6 Treatment by the Federal Deposit Insurance Corporation as conservator or receiver of financial assets transferred in connection with a securitization or participation.

* * * * *

(b) * * *

(2) With respect to any securitization for which transfers of financial assets were made, or for revolving trusts for which beneficial interests were issued, on or before September 30, 2010, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, provided that such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the "legal isolation" condition that is addressed by this rule.

* * * * *

Dated at Washington, DC, this 10th day of March 2010.

By Order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–5707 Filed 3–18–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM425; Special Conditions No. 25–403–SC]

Special Conditions: Airbus Model A318, A319, A320, and A321 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A318, A319, A320, and A321 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 9, 2010. We must receive your comments by May 3, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM425, 1601 Lind Avenue SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM425. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2785; facsimile (425) 227–2195; electronic mail *alan.sinclair@faa.gov.*

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

Comments Invited

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

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel 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 preamble between 7:30 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 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 January 15, 2010, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex, France, applied for a design change to Type Certificate No. A28NM for installation of seats that include non-traditional, large, non-metallic panels in Airbus Model A318, A319, A320, and A321 series airplanes. These airplanes, currently approved under Type Certificate No. A28NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single aisle, medium sized transport category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A28NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14, Code of Federal Regulations (14 CFR), part 25, Appendix F, parts IV and V, heat release and smoke emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101 Airbus must show that the Model A318, A319, A320, and A321 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A28NM are as follows: 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56; SFAR 27, effective February 1, 1974, including Amendments 27–1 through 27–5; and 14 CFR part 36 effective December 1, 1969, including Amendments 36–1 through 36–12.

In addition, the certification basis includes other regulations and special conditions that are not pertinent to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A318, A319, A320, and A321 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model A318, A319, A320, and A321 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

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

Novel or Unusual Design Features

The Model A318, A319, A320, and A321 series airplanes will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of occupants of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels. In order to provide a level of safety that is equivalent to that provided by the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

Definition of "Non-Traditional, Large, Non-Metallic Panel"

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas and associated furniture. Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors and shrouds.

Clarification of "Exposed"

"Exposed" is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface area parts. Specifically, the rules require

measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (i.e., § 25.853 entitled "Compartment interiors" as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes, over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and there were only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat release and smoke requirements. The requirements, therefore, did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded "because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats."

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: "It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made."

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, "Guidance for Flammability Testing of Seat/Console Installations," October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards defined in § 25.853(d) to seats with large non-metallic panels in their design.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A318, A319, A320, and A321 series airplanes. Although the heat release and smoke testing requirements of § 25.853 per Appendix F, parts IV and V, are not part of the part 25 certification basis for the Airbus Model A318, A319, A320, and A321 series airplanes, these special conditions are applicable if the airplanes are in 14 CFR part 121 service. Part 121 requires applicable interior panels to comply with § 25.853, Appendix F, parts IV and V, regardless of the certification basis. It is not our intent to require seats with large non-metallic panels to meet § 25.853, Appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A318, A319, A320, and A321 series airplanes. It is not a rule of general applicability.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A318, A319, A320, and A321 series airplanes.

1. Except as provided in paragraph 3 of these special conditions, compliance with heat release and smoke emission testing requirements per 14 CFR part 25, § 25.853 Appendix F, parts IV and V, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

3. Seats do not have to meet the test requirements of 14 CFR part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

4. Only airplanes associated with new seat certification programs approved after the effective date of these special conditions will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes

with previously certificated interiors are not affected.

Issued in Renton, Washington, on March 9, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5871 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0883; Directorate Identifier 97–ANE–08; Amendment 39–16237; AD 97–17–04R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–209, –217, –217C, and –219 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for Pratt & Whitney JT8D–209, –217, –217C, and –219 turbofan engines with front compressor front hub (fan hub), part number (P/N) 5000501–01 installed. That AD currently requires cleaning the front compressor front hubs (fan hubs), initial and repetitive eddy current (ECI) and fluorescent penetrant inspections (FPI) of tierod and counterweight holes for cracks, removal of bushings, cleaning and ECI and FPI of bushed holes for cracks and, if necessary, replacement with serviceable parts. In addition, that AD currently requires reporting the findings of cracked fan hubs and monthly reports of the number of inspections completed. This AD requires the same actions, except for the monthly reporting of the number of completed inspections. This AD results from the FAA determining that it has collected a sufficient amount of data since issuing AD 97–17–04 and that therefore, it no longer needs the monthly reporting of the number of completed inspections. We are issuing this AD to prevent fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective April 22, 2010. The Director of the Federal Register previously approved the incorporation by reference of the publications listed in the regulations as of March 5, 1997 (62 FR 4902).

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Pratt & Whitney JT8D–209, –217, –217C, and –219 turbofan engines with front compressor front hub (fan hub), P/N 5000501–01 installed. We published the proposed AD in the **Federal Register** on December 21, 2009 (74 FR 67831). That action proposed to require cleaning the front compressor front hubs (fan hubs), initial and repetitive ECI and FPI of tierod and counterweight holes for cracks, removal of bushings, cleaning and ECI and FPI of bushed holes for cracks and, if necessary, replacement with serviceable parts. That action also proposed to eliminate the monthly reporting of the number of completed inspections.

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 (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received. The commenter supports the proposal.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD revision will affect 1,170 JT8D–209, –217, –217C, and –219 turbofan engines installed on airplanes of U.S. registry. We estimate that it will take four work-hours per engine to complete one inspection of the fan hub at piece-part exposure. The average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $374,400.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration 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 removing Amendment 39–10106 (62 FR 45152, August 26, 1997), and by adding a new airworthiness directive, Amendment 39–16237, to read as follows:

97–17–04R1 Pratt & Whitney: Amendment 39–16237. Docket No. FAA–2009–0883; Directorate Identifier 97–ANE–08.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 22, 2010.

Affected ADs

(b) This AD revises AD 97–17–04, Amendment 39–10106.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–209, –217, –217C, and –219 turbofan engines with front compressor front hub (fan hub), part number (P/N) 5000501–01, installed. These engines are installed on, but not limited to, McDonnell Douglas MD–80 series airplanes.

Unsafe Condition

(d) This AD results from the FAA determining that it has collected a sufficient amount of data since issuing AD 97–17–04 and that therefore, it no longer needs the monthly reporting of the number of completed inspections. We are issuing this AD to prevent fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the airplane.

Compliance

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

(f) Inspect fan hubs for cracks in accordance with the Accomplishment Instructions, Paragraph A, Part 1, and, if applicable, Paragraph B, of PW Alert Service Bulletin (ASB) No. A6272, dated September 24, 1996, as follows:

(1) For fan hubs identified by serial numbers (S/Ns) in Table 2 of this AD, after the fan hub has accumulated more than 4,000 cycles-since-new (CSN), as follows:

(i) Initially inspect within 315 cycles-in-service (CIS) from the effective date of this AD, or 4,315 CSN, whichever occurs later.

(ii) Thereafter, re-inspect after accumulating 2,500 CIS since last inspection, but not to exceed 10,000 CIS since last inspection.

(2) For fan hubs identified by S/Ns in Appendix A of PW ASB No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 CSN, as follows:

(i) Select an initial inspection interval from Table 1 of this AD, and inspect accordingly.

TABLE 1—INSPECTIONS

Initial inspection	Re-inspection
(A) Within 1,050 CIS after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 5,050 CSN, whichever occurs later;	After accumulating 2,500 CIS since-last-inspection, but not to exceed 6,000 CIS since-last-inspection.
OR	OR
(B) Within 990 CIS after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 4,990 CSN, whichever occurs later;	After accumulating 2,500 CIS since-last-inspection, but not to exceed 8,000 CIS since-last-inspection.
OR	OR
(C) Within 965 CIS after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 4,965 CSN, whichever occurs later.	After accumulating 2,500 CIS since-last-inspection, but not to exceed 10,000 CIS since-last-inspection.

TABLE 2—HUBS WITH TRAVELER NOTATIONS

M67663	M67802	P66880	S25545	P66747	R33099	S25292
M67671	M67812	P66885	S25558	P66756	R33107	S25299
M67675	M67826	R32732	S25564	P66800	R33113	S25301
M67681	M67829	R32733	S25598	P66814	R33124	S25302
M67685	M67830	R32735	S25618	P66819	R33131	S25308
M67686	M67831	R32740	S25621	P66831	R33132	S25312
M67687	M67832	R32741	S25637	R32767	R33133	S25316
M67697	M67834	R32810	S25640	R32787	R33136	S25323
M67700	M67843	R32849	T50693	R32792	R33152	S25334
M67706	M67849	R32850	T50752	R32795	R33157	S25335
M67710	M67858	S25222	T50785	R32796	R33163	S25337
M67712	M67866	S25464	T50791	R32800	R33165	S25344
M67713	M67868	S25481	T50792	R32807	R33168	S25369
M67714	M67869	S25483	T50819	R32856	R33171	S25377
M67715	M67872	S25484	T50823	R32860	R33173	S25378
M67716	M67888	S25486	T50827	R32870	R33180	S25381
M67717	N71771	S25488	T50874	R32883	R33181	S25394
M67722	N71804	S25489	T50875	R32905	R33189	S25399
M67723	N71806	S25490	T51058	R32926	R33194	S25402
M67725	N71810	S25491	T51104	R32930	R33198	S25406
M67726	N71811	S25492		R32952	R33201	S25411
M67730	N71875	S25494		R32964	R33202	S25413
M67731	N71876	S25495		R32966	R33207	S25414
M67746	N71921	S25497		R32971	S25193	S25415

TABLE 2—HUBS WITH TRAVELER NOTATIONS—Continued

M67751	N71965	S25498	R32976	S25195	S25418
M67753	N72062	S25499	R32981	S25207	S25419
M67764	N72126	S25500	R32990	S25208	S25421
M67765	N72152	S25501	R32994	S25221	S25422
M67784	N72162	S25502	R33000	S25229	S25430
M67791	N72207	S25505	R33004	S25238	S25437
M67792	N72216	S25506	R33040	S25246	S25439
M67793	N72219	S25507	R33055	S25248	S25449
M67794	N72242	S25508	R33059	S25250	R33186
M67795	P66693	S25509	R33077	S25256	S25528
M67796	P66695	S25514	R33080	S25262	
M67797	P66696	S25529	R33082	S25268	
M67798	P66698	S25532	R33086	S25278	
M67799	P66699	S25541	R33087	S25287	
M67800	P66737	S25543	R33089	S25288	
M67801	P66753	S25544	R33090		

(ii) Thereafter, re-inspect at intervals that correspond to the selected inspection interval.

(3) If a fan hub is identified in both Table 2 of this AD and Appendix A of PW ASB No. A6272, dated September 24, 1996, inspect in accordance with paragraph (f)(1) or (f)(2) of this AD, whichever occurs first.

(4) For fan hubs with S/Ns not listed in Table 2 of this AD or in Appendix A of PW ASB No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 CSN, inspect the next time the fan hub is in the shop at piece-part level, but not to exceed 10,000 CIS after March 5, 1997.

(5) Prior to further flight, remove from service fan hubs found cracked or that exceed the bushed hole acceptance criteria described in PW ASB No. A6272, dated September 24, 1996.

Reporting Requirements

(g) Report findings of cracked fan hubs using Accomplishment Instructions, Paragraph F, of Attachment 1 to PW ASB No. A6272, dated September 24, 1996, within 48 hours to Kevin Dickert, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7117; fax (781) 238–7199; e-mail: *kevin.dickert@faa.gov.*

(h) The Office of Management and Budget (OMB) has approved the reporting requirements and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19. Alternate methods of compliance approved in accordance with AD 97–17–04 are approved as alternate methods of compliance with this AD.

Material Incorporated by Reference

(j) You must use the Pratt & Whitney service information specified in Table 3 of this AD to perform the inspections required by this AD. The Director of the Federal Register previously approved the incorporation by reference of the documents listed in the following Table 3 as of March 5, 1997 (62 FR 4902) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

TABLE 3—INCORPORATION BY REFERENCE

Service information	Page	Revision	Date
Alert Service Bulletin No. A6272 Total Pages: 21	All	Original	September 24, 1996.
Non-Destruct Inspection Procedure No. NDIP–892 Total Pages: 30	All	A	September 15, 1996.
Attachment I Total Pages: 4	All	A	September 15, 1996.

Issued in Burlington, Massachusetts, on March 9, 2010.

Peter A. White,

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

[FR Doc. 2010–5778 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29060; Directorate Identifier 2007–NE–34–AD; Amendment 39–16243; AD 2010–06–18]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. This AD requires a onetime fluorescent penetrant inspection of certain vortex reducers for cracks. This AD results from reports of fractured vortex reducers found at shop visits. We are issuing this AD to inspect for cracks in the vortex reducer. Cracks in the vortex reducer could result in an uncontained failure of the high-pressure (HP) compressor stage 3–8 drum and subsequent damage to the airplane.

DATES: This AD becomes effective April 22, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. We published the proposed AD in the **Federal Register** on April 30, 2009 (74 FR 19904), and a supplemental proposed AD on December 23, 2009 (74 FR 68192). That action proposed to require a onetime inspection of certain vortex reducers for cracks, and replacing the reducer and HP compressor stage 3–8 drum if the reducer is cracked.

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 (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect six IAE turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to perform the actions, and that the average labor rate is $80 per work-hour. No parts are required. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $480.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 airworthiness directive:

2010–06–18 International Aero Engines: Amendment 39–16243. Docket No. FAA–2007–29060; Directorate Identifier 2007–NE–34–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines with high-pressure (HP) compressor stage 3–8 drums, part numbers (P/Ns) 6A4900, 6A5467, 6A6473, 6A7383, 6A7384, 6A7385, and 6A7401, installed. These engines are installed on, but not limited to, Airbus A319, A320, and A321 series airplanes and Boeing MD–90 airplanes.

Unsafe Condition

(d) This AD results from reports of fractured vortex reducers found at shop visits. We are issuing this AD to inspect for cracks in the vortex reducer. Cracks in the vortex reducer could result in an uncontained failure of the HP compressor stage 3–8 drum and subsequent damage to the airplane.

Compliance

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

Onetime Fluorescent Penetrant Inspection

(f) Fluorescent penetrant inspect the vortex reducer for cracks when the HPC stage 3–8 drum has between 3,000 and 13,500 cycles-since-new (CSN) if all of the following conditions also apply:

(1) The HPC stage 3–8 drum has ever operated in an engine at the V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, or V2533–A5 thrust ratings,

(2) The vortex reducer had cycles accumulated on it when mated with the HPC stage 3–8 drum, and

(3) The HPC stage 3–8 drum had fewer than 3,000 CSN when mated to the vortex reducer.

(g) If the vortex reducer is cracked, remove both the vortex reducer and the HPC stage 3–8 drum from service.

(h) After the effective date of this AD, do not return to service any HPC stage 3–8 drum that was removed as specified in paragraph (g) of this AD.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) None.

Issued in Burlington, Massachusetts, on March 11, 2010.

Peter A. White,

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

[FR Doc. 2010–5860 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0880; Airspace Docket No. 09–ANM–14]

Amendment of Class E Airspace; Rawlins, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Rawlins, WY, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Rawlins Municipal/Harvey Field. This will improve the safety of Instrument Flight Rules (IFR) at the airport.

DATES: *Effective Date:* 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On November 9, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Rawlins, WY (74 FR 57621). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace for the Rawlins, WY, area adding additional controlled airspace extending upward from 700 feet above the surface to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Rawlins Municipal/Harvey Field, Rawlins, WY. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Rawlins Municipal/Harvey Field, Rawlins, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Rawlins, WY [Amended]

Rawlins Municipal/Harvey Field, Rawlins, WY
(Lat. 41°48′20″ N., long. 107°12′00″ W.)
Sinclair NDB
(Lat. 41°48′07″ N., long. 107°05′32″ W.)

Within a 4.3-mile radius of the Rawlins Municipal/Harvey Field and within 4.3 miles north and 3 miles south of the 089° bearing from the Sinclair NDB extending from the 4.3-mile radius to 2.2 miles east of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Rawlins, WY [Modified]

Rawlins Municipal/Harvey Field, Rawlins, WY
(Lat. 41°48′20″ N., long. 107°12′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the Rawlins Municipal/Harvey Field Airport, and within 4.3 miles each side of the 090° bearing from the Rawlins Municipal/Harvey Field Airport extending from the Airport to 15 miles east; that airspace extending upward from 1,200 feet above the surface beginning at lat. 41°30′20″ N., long. 107°59′26″ W.; to lat. 41°51′51″ N., long. 108°04′00″ W.; lat. 41°55′28″ N., long. 107°32′00″ W.; to lat. 42°20′33″ N., long. 107°07′43″ W.; to lat. 42°02′42″ N., long. 106°33′00″ W.; to lat. 41°52′00″ N., long. 106°42′00″ W.; to lat. 41°45′00″ N., long. 106°41′00″ W.; to lat. 41°28′21″ N., long. 106°37′13″ W.; to lat. 41°36′20″ N., long. 107°08′23″ W.; to the point of the beginning.

Issued in Seattle, Washington on March 3, 2010.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–5610 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0949; Airspace Docket No. 09–ANM–12]

Establishment and Modification of Class E Airspace; Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish and amend existing Class E airspace at Gunnison, CO, to accommodate aircraft using a new Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) at Gunnison-Crested Butte Regional Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On November 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Gunnison, CO (74 FR 58569). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E surface airspace, and adding additional Class E airspace extending upward from 700 feet above the surface, at Gunnison-Crested Butte Regional Airport, to accommodate IFR aircraft executing new RNAV SIAPs at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Gunnison-Crested Butte Regional Airport, Gunnison, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends

14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM CO E2 Gunnison, CO [New]

Gunnison-Crested Butte Regional Airport, CO (Lat. 38°32′02″ N., long. 106°55′59″ W.)

Within a 4.5-mile radius of the Gunnison-Crested Butte Regional Airport. This Class E airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Gunnison, CO [Modified]

Gunnison-Crested Butte Regional Airport, CO (Lat. 38°32′02″ N., long. 106°55′59″ W.)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 38°10′00″ N., long. 107°10′00″ W.; to lat. 38°21′25″N., long. 107°25′00″ W.; to lat. 38°24′30″ N., long. 107°21′00″ W.; lat. 38°33′30″ N., long. 107°20′00″ W.; to lat. 38°31′25″ N., long. 107°12′30″ W.; to lat. 38°44′00″ N., long. 106°58′00″ W.; to lat. 38°34′00″ N., long. 106°40′00″ W.; thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 37°59′30″ N., long. 107°16′00″ W.; to lat. 38°17′45″ N., long. 107°39′00″ W.; to lat. 38°51′00″ N., long. 107°00′10″ W.; to lat. 38°16′40″ N., long. 106°08′00″ W.; to lat. 38°09′00″ N., long. 106°16′00″ W.; to lat. 38°18′30″ N., long. 106°47′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on March 3, 2010.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–5605 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0954; Airspace Docket No. 09–ANM–11]

Establishment of Class E Airspace; Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Hailey, ID, to accommodate aircraft using the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Friedman Memorial Airport. This will improve the safety of Instrument Flight Rules (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On December 15, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Hailey, ID (74 FR 66258). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E surface airspace for the Hailey, ID, area to accommodate IFR aircraft executing a new RNAV (GPS) SIAPs at Friedman Memorial Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Friedman Memorial Airport, Hailey, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM ID E2 Hailey, ID [New]

Friedman Memorial Airport, ID
(Lat. 43°30′14″ N., long. 114°17′44″ W.)

Within a 4.1-mile radius of the Friedman Memorial Airport, and within 1.8 miles each side of the 159° bearing from the airport, extending from the 4.1-mile radius to 6 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on March 3, 2010.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–5604 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1057; Airspace Docket No. 09–AWP–9]

Establishment of Class E Airspace; Battle Mountain, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Battle Mountain, NV, to accommodate aircraft using the VHF Omni-Directional Radio Range (VOR)/Distant Measuring Equipment (DME) Standard Instrument Approach Procedures (SIAPs) at Battle Mountain Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operation at the airport.

DATES: *Effective Date:* 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Battle Mountain, NV (74 FR 67143). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace for the Battle Mountain, NV, area adding additional controlled airspace extending upward from the surface to accommodate IFR aircraft executing a VOR/DME approach procedure at Battle Mountain Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Battle Mountain Airport, Battle Mountain, NV.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

AWP NV E2 Battle Mountain, NV [New]

Battle Mountain Airport, NV
(Lat. 40°35′′57″ N., long. 116°52′28″ W.)

Within a 4.2-mile radius of Battle Mountain Airport, and within 1.4 miles each side of the 218° bearing extending from the 4.2-mile radius to 7.4 miles southwest of the Battle Mountain Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on March 3, 2010.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–5606 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2009–0693; Airspace Docket No. 09–AAL–14]

RIN 2120–AA66

Amendment of Restricted Area R–2204 High and R–2204 Low; Oliktok Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends R–2204 High and R–2204 Low at Oliktok Point, AK, by increasing the authorized times of designation and extending the duration of the restricted areas beyond 2009, until they are no longer needed by the Department of Energy (DOE). Continued access to R–2204 High and R–2204 Low at Oliktok, AK, is required for current moored balloon and future climate-related aviation activities.

DATES: Effective date 0901 UTC, June 3, 2010.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Restricted Area R–2204 High and R–2204 Low in Alaska (74 FR 61291). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received in support of the proposed rule stressing the importance of continued climate studies at Oliktok Point, Alaska.

Section 73.22 of Title 14 CFR part 73 was republished in FAA Order 7400.8S, effective February 16, 2010.

The DOE, Sandia National Laboratories, is continuing its arctic climatology research on the North Slope of Alaska. Their Adjacent Arctic Ocean site is providing data about cloud and radiative processes at high latitudes. The arctic area has been identified as one of the most sensitive regions to climate change. In 2004, the need to operate an unlighted moored balloon in clouds resulted in the establishment of R–2204 at Oliktok Point. That site was selected because of it's proximity to the Arctic Ocean, availability of ground infrastructure to support the scientists, and remoteness that lessens the impacts to other instrument flight rules and visual flight rules air traffic.

In addition to the current moored balloon activities, scientists are interested in testing the use of unmanned aircraft systems (UAS) over the coastal waters (in clouds) of the Arctic Ocean and propose to launch and recover UAS aircraft at the Oliktok station. A Certificate of Approval for flight outside of R–2204 would be required by the FAA for UAS operations not contained within R–2204. The DOE has stated that they are anticipating the development of Letters of Agreement with other aircraft operators using airspace in the vicinity of Oliktok to ensure that access to airspace within R–2204 is available within the parameters agreed upon by the parties involved. On April 21, 2008, the FAA published in the **Federal Register** a final rule to amend R–2204 by changing the using agency and subdividing the area to create R–2204 High and R–2204 Low (73 FR 21246).

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by amending the time of designation to allow activation of R–2204 High and R–2204 Low by NOTAM 24 hours in advance for up to 75 days per year. Special Use Airspace R–2204 High and R–2204 Low would continue to be designated until it is no longer required by the DOE to conduct research.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the times of designation for restricted area airspace at Oliktok Point, Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311p. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the FAA amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.22 [Amended]

■ 2. § 73.22 is amended as follows:

* * * * *

R–2204 High, Oliktok Point, AK [Amended]

Under Time of Designation, remove the words "By NOTAM, 24 hours in advance, not to exceed 30 days annually" and insert "By NOTAM, 24 hours in advance, not to exceed 75 days per year."

* * * * *

R–2204 Low, Oliktok Point, AK [Amended]

Under Time of Designation, remove the words "By NOTAM, 24 hours in advance, not to exceed 30 days annually" and insert "By NOTAM, 24 hours in advance, not to exceed 75 days per year."

* * * * *

Issued in Washington, DC, on March 4, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–5269 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30714; Amdt. No. 3364]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 18, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 2010.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on March 5, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 8 APR 2010

Auburn, CA, Auburn Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Columbia, CA, Columbia, GPS RWY 35, Orig, CANCELLED
Columbia, CA, Columbia, RNAV (GPS) RWY 35, Orig
Lakeport, CA, Lampson Field, Takeoff Minimums and Obstacle DP, Amdt 1
Mammoth Lakes, CA, Mammoth Yosemite, RNAV (GPS) RWY 27, Amdt 1
Shafter, CA, Shafter-Minter Field, RNAV (GPS) RWY 12, Orig
Shafter, CA, Shafter-Minter Field, VOR–A, Orig
Shafter, CA, Shafter-Minter Field, VOR OR GPS RWY 30, Orig, CANCELLED
Panama City, FL, Northwest Florida-Panama City Intl, ILS OR LOC/DME RWY 16, Orig
Panama City, FL, Northwest Florida-Panama City Intl, RNAV (GPS) RWY 16, Orig
Panama City, FL, Northwest Florida-Panama City Intl, RNAV (GPS) RWY 34, Orig
Panama City, FL, Northwest Florida-Panama City Intl, Takeoff Minimums and Obstacle DP, Orig
Tampa, FL, Tampa Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Winder, GA, Barrow County, ILS OR LOC RWY 31, Orig
Winder, GA, Barrow County, LOC RWY 31, Amdt 8C, CANCELLED
Winder, GA, Barrow County, RNAV (GPS) RWY 13, Amdt 1
Winder, GA, Barrow County, RNAV (GPS) RWY 23, Orig
Winder, GA, Barrow County, RNAV (GPS) RWY 31, Amdt 1
Winder, GA, Barrow County, VOR/DME RNAV OR GPS RWY 23, Orig-C, CANCELLED
Belle Plaine, IA, Belle Plaine Muni, NDB RWY 36, Orig-A, CANCELLED
Knoxville, IA, Knoxville Muni, GPS RWY 15, Orig, CANCELLED
Knoxville, IA, Knoxville Muni, GPS RWY 33, Orig, CANCELLED
Knoxville, IA, Knoxville Muni, RNAV (GPS) RWY 15, Orig
Knoxville, IA, Knoxville Muni, RNAV (GPS) RWY 33, Orig
Knoxville, IA, Knoxville Muni, Takeoff Minimums and Obstacle DP, Orig
Mapleton, IA, James G Whiting Memorial Field, GPS RWY 2, Orig, CANCELLED
Mapleton, IA, James G Whiting Memorial Field, GPS RWY 20, Orig, CANCELLED
Mapleton, IA, James G Whiting Memorial Field, RNAV (GPS) RWY 2, Orig
Mapleton, IA, James G Whiting Memorial Field, RNAV (GPS) RWY 20, Orig
Carbondale/Murphysboro, IL, Southern Illinois, RNAV (GPS) RWY 18L, Orig
Joliet, IL, Joliet Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Fort Wayne, IN, Fort Wayne Intl, RNAV (GPS) RWY 14, Amdt 1
Fort Wayne, IN, Fort Wayne Intl, RNAV (GPS) RWY 32, Amdt 1
Muncie, IN, Delaware County-Johnson Field, RNAV (GPS) RWY 20, Orig
Muncie, IN, Delaware County-Johnson Field, VOR RWY 20, Amdt 14
Covington, KY, Cincinnati/Northern Kentucky Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Mount Sterling, KY, Mt Sterling-Montgomery County, Takeoff Minimums and Obstacle DP, Amdt 1
Hammond, LA, Hammond Northshore Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Sanford, ME, Sanford Rgnl, RNAV (GPS) RWY 32, Orig
Marquette, MI, Sawyer Intl, Takeoff Minimums and Obstacle DP, Orig
Bemidji, MN, Bemidji Rgnl, ILS OR LOC RWY 31, Amdt 5
Bemidji, MN, Bemidji Rgnl, ILS OR LOC/DME RWY 25, Amdt 1
Bemidji, MN, Bemidji Rgnl, VOR/DME RWY 13, Orig
Bemidji, MN, Bemidji Rgnl, VOR/DME RWY 31, Orig
Cameron, MO, Cameron Memorial, NDB RWY 35, Amdt 3
Cameron, MO, Cameron Memorial, RNAV (GPS) RWY 17, Amdt 1
Cameron, MO, Cameron Memorial, RNAV (GPS) RWY 35, Amdt 1
Cameron, MO, Cameron Memorial, Takeoff Minimums and Obstacle DP, Orig
Jackson, MS, Hawkins Field, ILS OR LOC RWY 16, Amdt 5
Jackson, MS, Hawkins Field, RNAV (GPS) RWY 16, Amdt 1
Jackson, MS, Hawkins Field, RNAV (GPS) RWY 34, Amdt 1
Oak Island, NC, Brunswick County, RNAV (GPS) RWY 5, Amdt 1
Bassett, NE, Rock County, NDB RWY 31, Amdt 4
Bassett, NE, Rock County, RNAV (GPS) RWY 13, Amdt 1
Bassett, NE, Rock County, RNAV (GPS) RWY 31, Amdt 1
Bassett, NE, Rock County, Takeoff Minimums and Obstacle DP, Amdt 2
Rome, NY, Griffiss Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, Takeoff Minimums and Obstacle DP, Amdt 14
Oklahoma City, OK, Clarence E Page Muni, RNAV (GPS) RWY 35L, Amdt 2A
Collegeville, PA, Perkiomen Valley, RNAV (GPS) RWY 9, Amdt 1, CANCELLED
Collegeville, PA, Perkiomen Valley, RNAV (GPS) RWY 27, Orig, CANCELLED
Collegeville, PA, Perkiomen Valley, RNAV (GPS)–B, Orig
Collegeville, PA, Perkiomen Valley, RNAV (GPS)–C, Orig
Mount Pleasant, SC, Mt Pleasant Rgnl-Faison Field, RNAV (GPS) RWY 17, Orig
Mount Pleasant, SC, Mt Pleasant Rgnl-Faison Field, RNAV (GPS) RWY 35, Orig
Chattanooga, TN, Lovell Field, Takeoff Minimums and Obstacle DP, Amdt 11
Abilene, TX, Abilene Rgnl, RNAV (GPS) RWY 17L, Amdt 1
Abilene, TX, Abilene Rgnl, RNAV (GPS) RWY 35R, Amdt 1
Albany, TX, Albany Muni Airport, RNAV (GPS) RWY 17, Orig
Albany, TX, Albany Muni Airport, RNAV (GPS) RWY 35, Orig
Albany, TX, Albany Muni Airport, Takeoff Minimums and Obstacle DP, Orig
Carrizo Springs, TX, Dimmit County, GPS RWY 31, Orig, CANCELLED
Carrizo Springs, TX, Dimmit County, RNAV (GPS) RWY 31, Orig
El Paso, TX, El Paso Intl, GPS RWY 4, Orig–B, CANCELLED
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 4, Orig
Henderson, TX, Rusk County, Takeoff Minimums and Obstacle DP, Amdt 2
Huntsville, TX, Huntsville Muni, RNAV (GPS) RWY 18, Orig-A
Danville, VA, Danville Rgnl, ILS OR LOC RWY 2, Amdt 4
Danville, VA, Danville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Danville, VA, Danville Rgnl, VOR RWY 2, Amdt 14
Danville, VA, Danville Rgnl, VOR RWY 20, Amdt 2
Richmond, VA, Chesterfield County, RNAV (GPS) RWY 15, Amdt 1
Wise, VA, Lonesome Pine LOC/DME RWY 24, Orig
Rhinelander, WI, Rhinelander-Oneida County, ILS OR LOC RWY 9, Amdt 8
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) RWY 9, Amdt 1
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) RWY 15, Amdt 1
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) RWY 27, Amdt 1
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) RWY 33, Amdt 1
Rhinelander, WI, Rhinelander-Oneida County, RNAV (GPS) Z RWY 27, Orig, CANCELLED
West Bend, WI, West Bend Muni, NDB OR GPS RWY 31, Amdt 10A, CANCELLED
West Bend, WI, West Bend Muni, RNAV (GPS) RWY 6, Orig
West Bend, WI, West Bend Muni, RNAV (GPS) RWY 13, Orig
West Bend, WI, West Bend Muni, RNAV (GPS) RWY 24, Orig
West Bend, WI, West Bend Muni, RNAV (GPS) RWY 31, Orig

West Bend, WI, West Bend Muni, VOR/DME RNAV OR GPS RWY 13, Amdt 5A, CANCELLED

[FR Doc. 2010–5286 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30715; Amdt. No. 3365]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 18, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 2010.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on March 5, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Apr–10	NY	ISLIP	LONG ISLAND MAC ARTHUR	9/9568	2/23/10	RNAV (GPS) RWY 6, ORIG.
8–Apr–10	ID	BOISE	BOISE AIR TERMINAL/ GOWEN FLD.	0/2553	2/23/10	LOC BC RWY 28L, AMDT 1.
8–Apr–10	ID	BOISE	BOISE AIR TERMINAL/ GOWEN FLD.	0/2554	2/23/10	VOR/DME OR TACAN RWY 10L, AMDT 1B.
8–Apr–10	ID	BOISE	BOISE AIR TERMINAL/ GOWEN FLD.	0/2556	2/23/10	ILS OR LOC RWY 10R, AMDT 10; ILS RWY 10R (CAT II), AMDT 10.
8–Apr–10	MD	CLINTON	WASHINGTON EXECUTIVE/ HYDE FIELD.	0/4027	2/23/10	RNAV (GPS) RWY 5, ORIG.
8–Apr–10	KS	GREAT BEND	GREAT BEND MUNI	0/4495	2/23/10	NDB OR GPS A, AMDT 5.
8–Apr–10	SD	PIERRE	PIERRE REGIONAL	0/4897	2/16/10	ILS OR LOC RWY 31, AMDT 12A.
8–Apr–10	SD	BRITTON	BRITTON MUNI	0/4899	2/16/10	RNAV (GPS) RWY 13, ORIG.
8–Apr–10	SD	BRITTON	BRITTON MUNI	0/4900	2/16/10	RNAV (GPS) RWY 31, ORIG.
8–Apr–10	TX	AMARILLO	RICK HUSBAND AMARILLO INTL.	0/4901	2/16/10	ILS RWY 4, AMDT 22.
8–Apr–10	TX	AUSTIN	AUSTIN-BERGSTROM INTL ..	0/4902	2/16/10	ILS OR LOC RWY 17R, AMDT 3.
8–Apr–10	OK	HENRYETTA	HENRYETTA MUNI	0/4941	2/16/10	RNAV (GPS) RWY 36, ORIG–A.
8–Apr–10	OK	NORMAN	UNIVERSITY OF OKLAHOMA WESTHEIMER.	0/4943	2/16/10	NDB RWY 35, ORIG–B.
8–Apr–10	TX	LUBBOCK	LUBBOCK PRESTON SMITH INTL.	0/4968	2/16/10	VOR A, AMDT 6A.
8–Apr–10	MT	HAMILTON	RAVALLI COUNTY	0/4994	2/23/10	RNAV (GPS) B, ORIG.
8–Apr–10	MT	HAMILTON	RAVALLI COUNTY	0/4997	2/23/10	RNAV (GPS) A, ORIG.
8–Apr–10	LA	DE QUINCY	DE QUINCY INDUSTRIAL AIRPARK.	0/5003	2/16/10	NDB RWY 15, AMDT 1A.
8–Apr–10	LA	ALEXANDRIA	ALEXANDRIA INTL	0/5004	2/23/10	RNAV (GPS) RWY 36, ORIG.
8–Apr–10	LA	DE RIDDER	BEAUREGARD REGIONAL ...	0/5005	2/16/10	RNAV (GPS) RWY 36, AMDT 1.
8–Apr–10	LA	DE RIDDER	BEAUREGARD REGIONAL ...	0/5006	2/16/10	RNAV (GPS) RWY 18, ORIG.
8–Apr–10	LA	DE RIDDER	BEAUREGARD REGIONAL ...	0/5007	2/16/10	NDB RWY 36, AMDT 5.
8–Apr–10	LA	DE RIDDER	BEAUREGARD REGIONAL ...	0/5008	2/16/10	LOC RWY 36, AMDT 3.
8–Apr–10	LA	DE RIDDER	BEAUREGARD REGIONAL ...	0/5056	2/16/10	RADAR–1, ORIG.
8–Apr–10	OH	AKRON	AKRON FULTON INTL	0/5059	2/16/10	NDB OR GPS RWY 25, AMDT 13A.
8–Apr–10	OH	AKRON	AKRON FULTON INTL	0/5060	2/16/10	LOC RWY 25, AMDT 13A.
8–Apr–10	OH	AKRON	AKRON FULTON INTL	0/5061	2/16/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 1.
8–Apr–10	IA	BURLINGTON	SOUTHEAST IOWA REGIONAL.	0/5066	2/16/10	VOR RWY 30, AMDT 13.
8–Apr–10	IA	BURLINGTON	SOUTHEAST IOWA REGIONAL.	0/5067	2/16/10	ILS OR LOC RWY 36, AMDT 10.
8–Apr–10	IA	BURLINGTON	SOUTHEAST IOWA REGIONAL.	0/5068	2/16/10	VOR/DME RWY 12, AMDT 6.
8–Apr–10	IA	CLINTON	CLINTON MUNI	0/5079	2/16/10	VOR RWY 3, AMDT 15.
8–Apr–10	IA	CLINTON	CLINTON MUNI	0/5084	2/16/10	RNAV (GPS) RWY 21, ORIG.
8–Apr–10	IA	CLINTON	CLINTON MUNI	0/5085	2/16/10	ILS RWY 3, AMDT 4A.
8–Apr–10	IA	CLINTON	CLINTON MUNI	0/5086	2/16/10	RNAV (GPS) RWY 3, ORIG.
8–Apr–10	IA	CLINTON	CLINTON MUNI	0/5087	2/16/10	VOR/DME RWY 21, AMDT 9A.
8–Apr–10	ME	PRESQUE ISLE	NORTHERN MAINE REGIONAL ARPT AT PRESQUE IS.	0/5151	2/16/10	VOR/DME RWY 1, AMDT 12A.
8–Apr–10	WV	MARTINSBURG	EASTERN WV REGIONAL/ SHEPHERD.	0/5197	2/16/10	VOR A, AMDT 9.
8–Apr–10	TX	AMARILLO	RICK HUSBAND AMARILLO INTL.	0/5201	2/16/10	RNAV (GPS) RWY 31, ORIG.
8–Apr–10	TX	AUSTIN	AUSTIN-BERGSTROM INTL ..	0/5203	2/16/10	ILS RWY 17L, AMDT 1.
8–Apr–10	TX	AUSTIN	AUSTIN-BERGSTROM INTL ..	0/5204	2/16/10	ILS RWY 35R, AMDT 1.
8–Apr–10	PA	COLLEGEVILLE	PERKIOMEN VALLEY	0/5649	2/16/10	VOR A, ORIG.
8–Apr–10	MN	ST PAUL	ST PAUL DOWNTOWN HOLMAN FLD.	0/5661	2/16/10	ILS OR LOC RWY 14, AMDT 1.
8–Apr–10	MI	LANSING	CAPITAL CITY	0/6591	2/23/10	ILS OR LOC RWY 28L, AMDT 26.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Apr–10	AL	TUSCALOOSA	TUSCALOOSA REGIONAL	0/6915	2/23/10	VOR OR TACAN RWY 22, AMDT 14C.
8–Apr–10	MI	SAGINAW	MBS INTL	0/7049	2/23/10	ILS RWY 23, AMDT 4A.

[FR Doc. 2010–5284 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2010–N–0002]

Oral Dosage Form New Animal Drugs; Tetracycline Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The supplemental NADA provides for revised labeling for a 25 gram per pound concentration of tetracycline hydrochloride soluble powder used to make medicated drinking water for calves, swine, chickens, and turkeys for the treatment and control of various bacterial diseases.

DATES: This rule is effective March 18, 2010.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., 440 Rte. 22, Bridgewater, NJ 08807 filed a supplement to NADA 65–140 that provides for revised labeling for DURAMYCIN–10 (tetracycline hydrochloride), a soluble powder containing 25 grams of tetracycline hydrochloride per pound used to make medicated drinking water for calves, swine, chickens, and turkeys for the treatment and control of various bacterial diseases. The supplemental application is approved as of January 12, 2010, and the regulations are amended in 21 CFR 520.2345d to reflect the approval.

In addition, FDA has noticed that this approved concentration of tetracycline soluble powder has not been codified for this sponsor. At this time, the regulations are being amended to reflect approval of this product. This change is being made to improve the accuracy of the animal drug regulations.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 520.2345d, revise paragraphs (b)(2) and (b)(3); remove paragraph (b)(4); and redesignate paragraph (b)(5) as paragraph (b)(4) to read as follows:

§ 520.2345d Tetracycline powder.

* * * * *

(b)* * *

(2) No. 000010: 102.4 and 324 grams per pound as in paragraph (d) of this section.

(3) No. 046573: 25, 102.4, and 324 grams per pound as in paragraph (d) of this section.

* * * * *

Dated: March 5, 2010.

Steven D. Vaughn,

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

[FR Doc. 2010–5925 Filed 3–17–10; 8:45 am]

BILLING CODE 4160–01–S

POSTAL SERVICE

39 CFR Part 111

Eligibility for Commercial Flats Failing Deflection

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service published a proposed rule regarding eligibility for commercial flats failing deflection in the **Federal Register** on December 14, 2009. This final rule provides revised mailing standards and price eligibility for commercial flats of all classes that fail to meet the deflection standard.

DATES: Basic standards effective June 7, 2010, with price consequences effective October 3, 2010.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202–268–7278.

SUPPLEMENTARY INFORMATION: This final rule contains modifications to the original proposal, in response to customer comments. The final rule does not include changes to the deflection standards, but to the pricing eligibility. In response to the original deflection proposal and scheduled implementation in May 2009, customers expressed concerns about the potential additional postage due for pieces failing the deflection standards. Based on these concerns and to align with other quality efforts, in December 2009 the Postal Service proposed to change the price eligibilities applicable for pieces that fail the deflection standards.

In this final rule notice we provide background, summary of the comments received, our response to the comments, a summary of the changes and revisions to the applicable prices for pieces that do not meet the deflection standards, followed by changes to the mailing standards in *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®).

Background

The Postal Service's final rule for new mailing standards to be effective in May 2009 was published in the **Federal Register** (74 FR 15380–15384) on April 6, 2009. The final rule included new deflection standards, previously applicable only to automation flats, for all commercial flat-size mail except saturation and high-density Periodicals and Standard Mail® flats, as a basic

eligibility standard for categorization as a flat. The implementation of the new deflection standards was postponed from the May 2009 date and was subsequently deferred further to June 2010.

As a reminder, the USPS® relaxed the deflection standards in 2007 by increasing the permitted deflection to up to 4″ for flat-size pieces at least 10″ long. Our difficulties in processing flats that came close to that new maximum deflection, and in processing oblong-shaped flats, made it clear that the change did not allow consistent, successful processing and handling of flats with the new maximum deflection. Our delayed implementation of June 7, 2010 offered mailers the opportunity to make changes to slightly stiffen or redesign their "droopy" flats to meet the new standards. The new deflection standards allow 1 inch less of vertical deflection (droop) than is currently allowed; as an example, 3 inches of deflection will be allowed for flats 10 inches or longer.

Comments

We received 35 comments from customers, including publishers, mailer associations, and consumers. Some of the commenters agreed with the general intent of the pricing eligibility, to encourage production of flats that we are reliably able to process efficiently; however even these commenters stated that the proposed increase was too high to be readily absorbed by mailers. Commenters provided various calculations—stating the increase for In-County carrier route newspapers as 78 percent, the range of increase across affected pieces as being from 8 percent to 78 percent, and the increase for Bound Printed Matter pieces from flats to parcel prices as "excessive." Many commenters advocated exempting basic carrier-route flats from the standard altogether, or at least exempting carrier-route flats which also are dropshipped to destination delivery units (DDUs).

Many of the commenters focused their comments on the likely negative effect on newspapers, which were generally categorized by the commenters as inherently unable to meet the new deflection standards. Several commenters noted that the increase for the most part was proportional to the sort level, the anomaly being the higher percentage increase for basic carrier route flats from carrier route to 5-digit prices. Additional customer comments and suggestions received:

- Many commenters were concerned about inconsistent testing at acceptance; some of those commenters suggested the need for a more objective verification process or tool.
- A few commenters asked for an error tolerance for flats in copalletized or comailed mailings.
- Several commenters requested sampling procedures for mailings of nonidentical pieces, perhaps similar to current manifest mailing sampling.
- The resultant increase in postage costs was characterized as discriminatory to newspapers.
- The resultant increase in postage would be too cost prohibitive to continue to mail and mailers may revert to electronic, hand, or other private delivery methods.
- The 5-digit price for carrier route pieces failing deflection negates the value of the sortation.
- The 5-digit price also negates the DDU discount for carrier route flats failing deflection (an apparent consequence since there are no DDU discount prices related to 5-digit sortation).
- Some commenters asked for pricing consequences similar to those for pieces that fail Move Update tests.
- Several commenters suggested that pieces receiving scans should be eligible for full-service IMb® pricing. If automation prices are denied, pieces that are prepared to be part of full-service IMb mailings would be ineligible for full-service IMb.
- Quarter-folding newspapers may bring flats into compliance, but at additional cost; and quarter-folding would not work well with any inserts. Also, there was concern that quarter-folded papers might not process well and may not provide a long-term solution.
- Several commenters advocated a prequalification process whereby sample pieces would be submitted and prequalified to pass deflection, to limit mailers' risk in producing pieces which may be found to fail deflection at acceptance. Linked with this suggestion was a request for a tolerance of up to ½ inch from the standards.
- Some commenters were concerned about their publications being drawn into the Flats Sequencing Sortation (FSS) workflow and possible negative effects on service.

There were a few general comments suggesting that the USPS should:

- Find the ability to accept pieces with a wider array of designs rather than limiting the designs of pieces that can be accepted as "machinable" flats.
- Develop better advance communication methods and implement more thorough communication to a wider spectrum of mailers.
- Provide intensive feedback about failed pieces to mailers between now and June 2010.
- Retain current deflection standards for six more months and enlist the assistance of a Lean Six-Sigma group.

Response to Comments

The prices proposed in our December 2009 proposal were developed in response to concerns about the previously proposed parcel price consequences. If we had not proposed these prices, most of the prices for commercial flats failing deflection would have been much higher than those proposed in the December 2009 proposal. Because of the postponement of price increases (for the affected classes of mail) from May 2010 until 2011, we were limited to existing prices in our establishment of prices for flimsy or droopy flat-size pieces. For most mailers, these prices can be avoided by changing the design or production of their mailpieces.

Flat-size pieces that do not meet deflection standards are not currently eligible for any automation flats prices, including full-service Intelligent Mail prices. Changes in mailing standards for flats over the last few years have brought the characteristics of mailpieces mailed at nonautomation flats prices more in line with automation flats characteristics, to better enable us to handle flats with or without a barcode. There is ample evidence that flimsy flat-size pieces that fail to meet deflection standards cannot be processed without incurring many feeding and jamming problems. Therefore, we cannot continue to accept those pieces at prices that are based on our ability to process such pieces via automated processing.

Based on comments received, we are making modifications to improve the objectivity of the testing process. Also, we are developing a random sampling procedure to test mailings of nonidentical pieces, including comailed and copalletized mailings.

Some commenters requested a prequalification process to ensure that tested mailpiece designs would qualify for automation or other specific prices regardless of whether they actually passed the deflection test at the time of acceptance. We will not be implementing a prequalification process. Flats as they are produced and presented for live mailing need to meet all the standards for the applicable prices. Just as we do today for a variety of other standards, we have procedures in place that encourage mailers to work closely with local postal employees to improve the quality of their mailpieces, thereby reducing the possibility of

incurring additional postage costs. We will be expanding that evaluation process to provide guidance as to whether a sample mailpiece is likely to meet the deflection standards. This evaluation will allow mailers the opportunity to adjust the mailpiece as necessary to be eligible for machinable or automation prices.

To additionally assist the mailing community with feedback on their flat-size pieces, the USPS will continue to use our electronic mail improvement reporting (eMIR) system between now and implementation to alert mailers with problematic flats so that they may adjust their mailpiece design and avoid paying additional postage.

We strongly encourage mailers who are considering quarter-folding their flats to work with their local Mailpiece Design Analyst to discuss all options.

We understand mailers' concerns about DDU entry, but this notice will not address service implications related to DDU entry or to FSS processing.

After consideration of the comments, in recognition of the continued allowance of flats entry to DDUs for basic carrier route flats (Periodicals, Standard Mail, and Bound Printed Matter flats), we are exempting all basic carrier route flats dropshipped to DDUs from the deflection standards. This exemption includes Periodicals publications that are entered directly at delivery units via specifically-authorized exceptional dispatch procedures. We may re-evaluate this decision in the future and strongly encourage customers with this type of mail to work toward meeting the deflection standards.

We will not be exempting basic carrier route flats that are not entered at DDUs.

Recap of Pricing Eligibility

Effective October 3, 2010, for commercial flats that fail to meet the deflection standards, price eligibility by class of mail is described in the tables below. For all classes of mail, if the mailing is determined not to meet the deflection standards, the sortation for failed pieces may remain as prepared. However, for First-Class Mail presorted flats that will pay single-piece prices, the presorted marking must be obliterated or corrected via the addition of a "single-piece" marking.

FIRST-CLASS MAIL AUTOMATION

Eligibility as presented	Eligibility with failed deflection
Automation 5-digit flat	Presorted flat.
Automation 3-digit	Presorted flat.
Automation ADC	Presorted flat.
Automation MADC	Presorted flat.

FIRST-CLASS MAIL PRESORTED (NONAUTOMATION)

Eligibility as presented	Eligibility with failed deflection
Presorted flat	Single-piece flat or presorted parcel.

PERIODICALS OUTSIDE COUNTY

Piece price eligibility as presented	Piece price eligibility with failed deflection
Basic Carrier Route flat, if not entered at a DDU	Machinable 5-digit flat.
Machinable barcoded 5-digit flat	Nonmachinable barcoded 5-digit flat.
Machinable barcoded 3-digit flat	Nonmachinable barcoded 3-digit flat.
Machinable barcoded ADC flat	Nonmachinable barcoded ADC flat.
Machinable barcoded MADC flat	Nonmachinable barcoded MADC flat.
Machinable nonbarcoded 5-digit flat	Nonmachinable nonbarcoded 5-digit flat.
Machinable nonbarcoded 3-digit flat	Nonmachinable nonbarcoded 3-digit flat.
Machinable nonbarcoded ADC flat	Nonmachinable nonbarcoded ADC flat.
Machinable nonbarcoded MADC flat	Nonmachinable nonbarcoded MADC flat.
Nonmachinable barcoded or nonbarcoded flat	Price claimed, if otherwise eligible.

PERIODICALS IN-COUNTY

Piece price eligibility as presented	Piece price eligibility with failed deflection
Basic Carrier Route flat, if not entered at a DDU	Nonautomation (or automation, if barcoded) 5-digit flat.
Automation 5-digit flat	Nonautomation 5-digit flat.
Automation 3-digit flat	Nonautomation 3-digit flat.
Automation basic flat	Nonautomation basic flat.

STANDARD MAIL

Eligibility as presented	Eligibility with failed deflection
Basic Carrier Route flat, if not entered at a DDU	Nonautomation 5-digit flat.

STANDARD MAIL—Continued

Eligibility as presented	Eligibility with failed deflection
Automation 5-digit flat	Nonautomation 5-digit flat.
Automation 3-digit flat	Nonautomation 3-digit flat.
Automation ADC flat	Nonautomation ADC flat.
Automation MADC flat	Nonautomation MADC flat.
Nonautomation flat (all sort levels)	Nonautomation MADC flat.

BOUND PRINTED MATTER

Eligibility as presented	Eligibility with failed deflection
Carrier Route flat, if not entered at a DDU	Carrier Route parcel.
Barcoded presorted flat	Presorted parcel.
Nonbarcoded presorted flat	Presorted parcel.
Nonbarcoded nonpresorted flat	Price as claimed, if otherwise eligible.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

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

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

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

300 Commercial Mail Flats

* * * * *

301 Physical Standards

1.0 Physical Standards for Flats

* * * * *

[Renumber current 1.6 and 1.7 as new 1.7 and 1.8.] [Move 301.3.2.3 in its entirety, renumber as new 1.6, revise heading and text and graphics to extend revised maximum deflection standards to all flat-size mailpieces, and delete item c as follows:]

1.6 Maximum Deflection for Flat-Size Mailpieces

Flat-size mailpieces must be flexible (see 1.3) and must meet maximum deflection standards. Flat-size pieces mailed as high density or saturation carrier route pieces, and basic carrier route pieces entered by the mailer at destination delivery units (DDUs), are not required to meet these deflection standards. Flat-size pieces mailed as basic carrier route pieces that are not entered at DDUs are not exempt from meeting the standards. Test deflection as follows:

a. For pieces 10 inches or longer (see Exhibit 1.5a):

1. Place the piece on a flat, straight-edge surface with the length perpendicular to the edge of the surface and extend the piece 5 inches off the edge of the surface. Test square-shaped bound flats by placing the bound edge parallel to the edge.

2. Place a flat 12-inch ruler (or other similar flat object 12 inches or longer) on top of the mailpiece with the length parallel to the edge of the surface and as close to the edge as possible so that the 5-pound weight (see 1.6a3) does not extend past the edge.

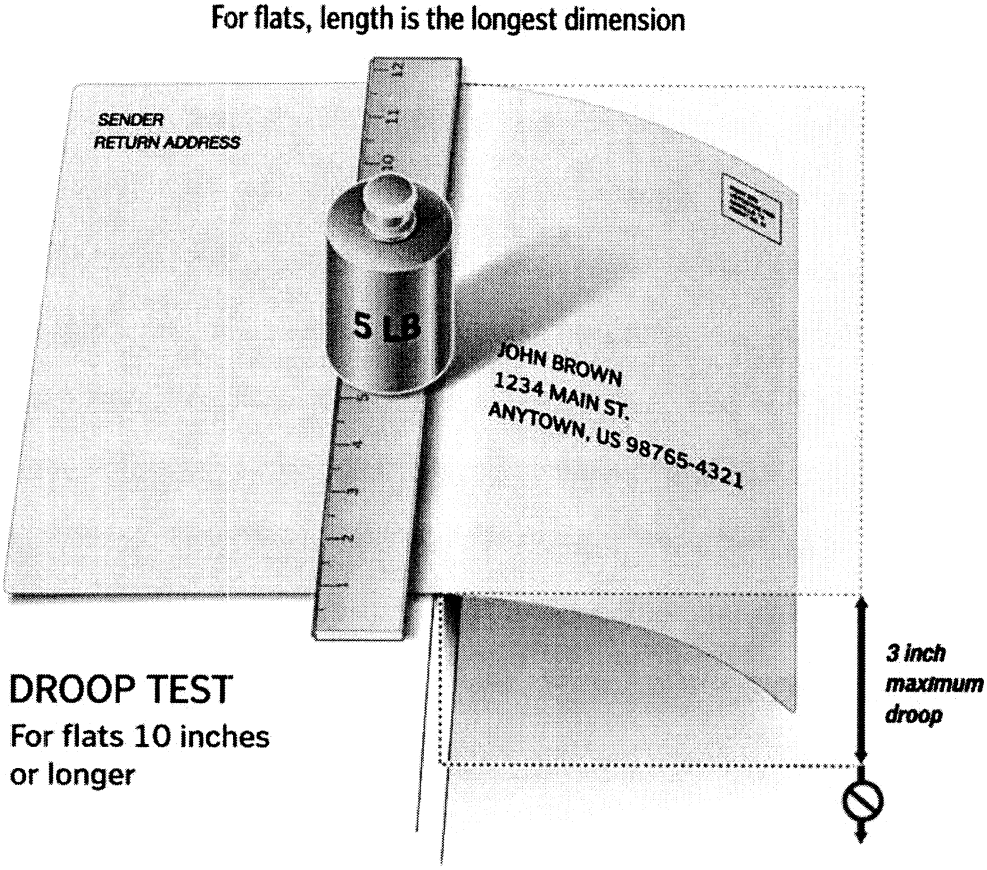
3. Place a certified 5-pound weight on the center of the ruler to hold the piece in place.

4. Determine the vertical deflection in inches.

5. Turn the piece around 180 degrees and repeat the process.

6. The piece is mailable as a flat if it does not droop more than 3 inches vertically at either end.

Exhibit 1.6a Deflection for Pieces 10 inches or Longer



b. For pieces less than 10 inches long (see Exhibit 1.6b):

1. Place the piece on a flat, straight-edge surface with the length perpendicular to the edge of the surface and extend the piece one-half of its length off the edge of the surface. Test square-shaped bound flats by placing the bound edge parallel to the edge.

2. Place a flat 12-inch ruler (or other similar flat object 12 inches or longer) on top of the mailpiece with the length parallel to the edge of the surface and as close to the edge as possible so that the 5-pound weight (see 1.6b3) does not extend past the edge.

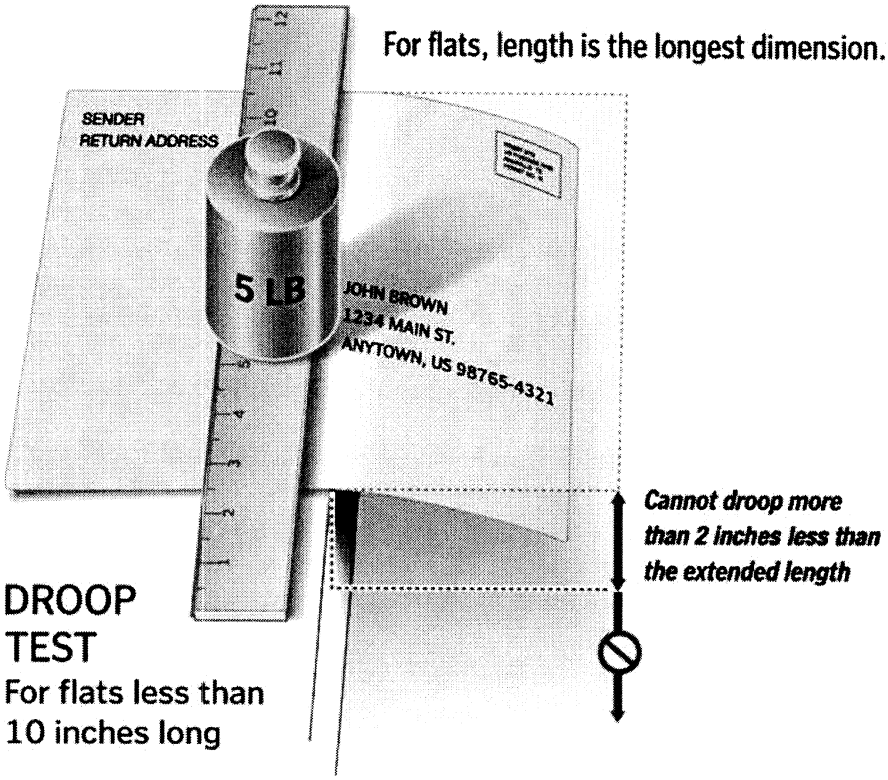
3. Place a certified 5-pound weight on the center of the ruler to hold the piece in place.

4. Determine the vertical deflection in inches.

5. Turn the piece around 180 degrees and repeat the process.

6. The piece is mailable as a flat if it does not droop more than 2 inches less than the extended length at either end. For example, a piece 8 inches long would be extended 4 inches horizontally off a flat surface. It must not droop more than 2 inches vertically at either end.

Exhibit 1.6b Deflection for Pieces Less Than 10 inches Long



1.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

[Revise text of 1.7 to read as follows:]

Effective October 3, 2010, flat-size mailpieces that do not meet the standards in 1.3 through 1.5 or the standards in 302.2.0 must pay applicable higher prices as noted in either 1.7a or 1.7b below.

a. Flat-size pieces that do not meet flexibility, uniform thickness, or polywrap standards in 1.3 through 1.5 must pay these applicable prices:

1. First-Class Mail—parcel prices.
2. Periodicals—parcel prices.
3. Standard Mail—Not Flat-Machinable or parcel prices.
4. Bound Printed Matter—parcel prices.

b. Flats that do not meet deflection standards in 1.6 must pay the applicable prices as noted in exhibit 1.7b. Under the column heading "eligibility as presented," flats will be considered to be presented as automation flats only if they meet all other eligibility standards for automation flats.

Exhibit 1.7b Pricing for Flats Exceeding Maximum Deflection

The price consequences in this exhibit are effective October 3, 2010 for pieces failing the deflection standard in 1.6.

FIRST-CLASS MAIL AUTOMATION

Eligibility as presented	Eligibility with failed deflection
Automation 5-digit flat	Presorted flat.
Automation 3-digit	Presorted flat.
Automation ADC	Presorted flat.
Automation MADC	Presorted flat.

FIRST-CLASS MAIL PRESORTED (NONAUTOMATION)

Eligibility as presented	Eligibility with failed deflection
Presorted flat	Single-piece flat or presorted parcel.

PERIODICALS OUTSIDE COUNTY

Piece price eligibility as presented	Piece price eligibility with failed deflection.
Basic Carrier Route flat, if not entered at a DDU	Machinable 5-digit flat.
Machinable barcoded 5-digit flat	Nonmachinable barcoded 5-digit flat.
Machinable barcoded 3-digit flat	Nonmachinable barcoded 3-digit flat.
Machinable barcoded ADC flat	Nonmachinable barcoded ADC flat.
Machinable barcoded MADC flat	Nonmachinable barcoded MADC flat.
Machinable nonbarcoded 5-digit flat	Nonmachinable nonbarcoded 5-digit flat.
Machinable nonbarcoded 3-digit flat	Nonmachinable nonbarcoded 3-digit flat.
Machinable nonbarcoded ADC flat	Nonmachinable nonbarcoded ADC flat.
Machinable nonbarcoded MADC flat	Nonmachinable nonbarcoded MADC flat.
Nonmachinable barcoded or nonbarcoded flat	Price claimed, if otherwise eligible.

PERIODICALS IN-COUNTY

Piece price eligibility as presented	Piece price eligibility with failed deflection
Basic Carrier Route flat, if not entered at a DDU	Nonautomation (or automation, if barcoded) 5-digit flat.
Automation 5-digit flat	Nonautomation 5-digit flat.
Automation 3-digit flat	Nonautomation 3-digit flat.
Automation basic flat	Nonautomation basic flat.

STANDARD MAIL

Eligibility as presented	Eligibility with failed deflection
Basic Carrier Route flat, if not entered at a DDU	Nonautomation 5-digit flat.
Automation 5-digit flat	Nonautomation 5-digit flat.
Automation 3-digit flat	Nonautomation 3-digit flat.
Automation ADC flat	Nonautomation ADC flat.
Automation MADC flat	Nonautomation MADC flat.
Nonautomation flat (all sort levels)	Nonautomation MADC flat.

BOUND PRINTED MATTER

Eligibility as presented	Eligibility with failed deflection
Carrie Route flat, if not entered at a DDU	Carrier Route parcel.
Barcoded presorted flat	Presorted parcel.
Nonbarcoded presorted flat	Presorted parcel.
Nonbarcoded nonpresorted flat	Price as claimed, if otherwise eligible.

* * * * *

3.0 Physical Standards for Automation Flats

* * * * *

3.2 Additional Criteria for Automation Flats

[Current 3.2.3 was previously renumbered as new 1.6.]

* * * * *

707 Periodicals

* * * * *

2.0 Price Application and Computation

2.1 Price Application

* * * * *

2.1.2 Applying Outside-County Piece Prices

* * * Apply piece prices for Outside-County mail as follows:

* * * * *

[Revise item c1 to read as follows:]

c. *Nonmachinable flats.*

1. Apply the "Nonmachinable Flats—Barcoded" prices to pieces that meet all of the alternative standards for flats in 26.0 and include a barcode. Exception: Barcoded pieces prepared under 26.0 and placed in 5-digit bundles pay the "Machinable Flats—Barcoded" 5-digit price. Effective October 3, 2010, "nonmachinable" barcoded flats claiming the machinable flats-barcoded 5-digit price must meet the deflection standards in 301.1.0.

* * * * *

26.0 Physical Criteria for Nonmachinable Flat-Size Periodicals

* * * * *

26.3 Flexibility and Deflection

[Revise the text of 26.3 to read as follows:]

Pieces prepared under 26.0 are not subject to the standards for flexibility in 301.1.3 or the standards for deflection in 301.3.2.3, except pieces claiming machinable 5-digit prices under 2.1. Effective October 3, 2010, nonmachinable flats in 5-digit bundles claiming 5-digit machinable flats prices must meet the deflection standards in 301.1.0.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–5738 Filed 3–17–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0027; FRL–9128–1]

RIN 2060–AO94

National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On December 2, 2009, EPA promulgated national emissions standards for the control of emissions of Hazardous Air Pollutants (HAP) from the asphalt processing and asphalt roofing manufacturing area source category (74 FR 63236). Following signature of this final rule, EPA discovered three inadvertent typographical errors in the numbering of paragraphs and is correcting those errors in this action.

DATES: This correction is effective on April 19, 2010.

FOR FURTHER INFORMATION CONTACT: Warren Johnson at (919) 541–5124.

SUPPLEMENTARY INFORMATION:

I. Summary of Amendments

We promulgated national emissions standards for the control of emissions of HAP from the asphalt processing and asphalt roofing manufacturing area source category on December 2, 2009 (40 CFR part 63, subpart AAAAAAA). Following signature of the final asphalt processing and asphalt roofing manufacturing area source standards in subpart AAAAAAA, we discovered three inadvertent typographical errors in the lettering of paragraphs in section 63.11563, entitled, "What are my Monitoring Requirements?" We are correcting those errors in this action. Also, in section 63.11564, entitled, "What are my Notification, Recordkeeping, and Reporting Requirements?" we are amending cross references to the paragraphs we are correcting in section 63.11563 to satisfy these cross references. A red line version of the corrected rule language is available in docket EPA–HQ–OAR–2009–0027. Table 1 of this preamble describes the five technical corrections to 40 CFR part 63, subpart AAAAAAA.

TABLE 1—TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART AAAAAAA, SECTIONS 63.11563 AND 63.11564

Technical correction	Reason
In section 63.11563, replace paragraph letter "(l)" with paragraph letter "(g)".	To have this paragraph follow paragraph 63.11563(f) in proper sequence, and to satisfy the cross reference in section 63.11563(c)(2)(iii).
In section 63.11563, replace paragraph letter "(m)" with paragraph letter "(h)".	To have this paragraph follow corrected paragraph (g) in proper sequence.
In section 63.11563, replace paragraph letter "(n)" with paragraph letter "(i)".	To have this paragraph follow corrected paragraph (h) in proper sequence.
In section 63.11564(c)(8), replace cross reference to section "63.11563(b) or (l)" with "63.11563(b) or (g)".	To satisfy the cross reference in section 63.11564(c)(8).
In section 63.11564(c)(9), replace cross reference to section "63.11563(m)" with "63.11563(h)".	To satisfy the cross reference in section 63.11564(c)(9).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the Agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment because only simple typographical errors are being corrected that do not substantially change the Agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B). (See also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 307(d)(1), indicating that the good cause provisions in subsection 553(b) of the APA continue to apply to this type of rulemaking under section 307(d) of the CAA.)

II. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 F.R. 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute (see Section I of this preamble), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4]. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

This technical correction does not have substantial direct effects on the States, or 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, Federalism (64 FR 43255, August 10, 1999).

This action does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). This correction also is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because it is not economically significant.

This technical correction is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

This technical correction does not involve changes to the technical standards related to test methods or monitoring requirements; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

This technical correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. Section 808 allows the issuing Agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, we have determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment because only simple typographical errors are being corrected that do not substantially change the Agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. EPA has therefore established an effective date of April 19, 2010. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of this action in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective April 19, 2010.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: March 11, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart AAAAAAA-—[Amended]

§ 63.11563 [Amended]

■ 2. Section 63.11563 is amended by redesignating paragraphs (l), (m) and (n) to become paragraphs (g), (h), and (i), respectively.

■ 3. Section 63.11564 is amended by revising paragraphs (c)(8) and (c)(9) to read as follows:

§ 63.11564 What are my notification, recordkeeping, and reporting requirements?

* * * * *

(c) * * *

(8) A copy of the site-specific monitoring plan required under § 63.11563(b) or (g).

(9) A copy of the approved alternative monitoring plan required under § 63.11563(h), if applicable.

* * * * *

[FR Doc. 2010–5964 Filed 3–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 268 and 270

[EPA–RCRA–2008–0678; FRL–9127–9]

RIN 2050–AG52

Hazardous Waste Technical Corrections and Clarifications Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking Direct Final action on a number of technical changes that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste generator requirements, standards for owners and operators of hazardous waste treatment, storage and disposal facilities, standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. These changes correct existing errors in the hazardous waste regulations that have occurred over time in numerous final rules published in the **Federal Register**, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA hazardous waste final rules.

DATES: This Direct Final Rule is effective on June 16, 2010 without further notice unless EPA receives adverse comments by May 3, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the Direct Final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. No. EPA–HQ–RCRA–2008–0678 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov* and *oleary.jim@epa.gov.* Attention Docket ID No. EPA–HQ–RCRA–2008–0678.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–RCRA–2008–0678.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2008–0678. Please include a total of 2 copies.
- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2008–0678. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://*

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 HQ–Docket Center, Docket ID No. EPA–HQ–RCRA–2008–0678, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (MC:5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: (703) 308–8827; or e-mail: *oleary.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposed rule to adopt the provisions in this Direct Final rule if adverse comments are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If we receive adverse comment on any individual correction, we will publish a timely withdrawal in the **Federal Register** to notify the public about a specific paragraph or amendment in the Direct Final rule that will not take effect.

II. Does This Action Apply to Me?

Entities potentially affected by this action include facilities subject to the RCRA hazardous waste regulations and States implementing the RCRA hazardous waste regulations.

III. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

IV. Acronyms

Acronym	Definition
CFR	United States Code of Federal Regulations.
EPA	United States Environmental Protection Agency.
HSWA	Hazardous and Solid Waste Amendments.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
U.S.C.	United States Code.

V. Preamble

A. What Is the Legal Authority for This Direct Final Rule?

This rule is authorized under Sections 1004, 3001, 3002, 3003, 3004 and 3005 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6903, 6921–6925.

B. Why Are We Amending Various Sections of Parts 260–266, 268 and 270?

In the process of publishing numerous final rules in the **Federal Register**, typographical errors, incorrect or outdated citations, and omissions have occurred. Similarly, the Agency has sometimes failed to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations when new rules were promulgated. These inadvertent errors and oversights have sometimes resulted in confusion and inefficiency on the part of the regulated community and Federal and State regulators implementing the hazardous waste regulatory program.

This rule addresses these problems by correcting the RCRA hazardous waste management regulations—specifically the general requirements under 40 CFR part 260, the hazardous waste identification requirements under 40 CFR part 261, the manifesting and hazardous waste generator requirements under 40 CFR part 262, the hazardous waste transporter requirements under 40 CFR part 263, the related manifesting and emergency preparedness requirements under 40 CFR parts 264 and 265, the requirements for recycling of hazardous wastes in a manner constituting disposal under 40 CFR part 266, the land disposal restrictions requirements under 40 part 268, and the hazardous waste permit program requirements under 40 CFR part 270. Several re-designation and format corrections are also included for several

paragraphs in the permitting and interim status requirements under 40 CFR parts 264 and 265.

However, unlike most of the technical corrections and clarifications in today's rule, the changes associated with the hazardous waste manifest regulations are closely interrelated, and involve changes to several sections and paragraphs in 40 CFR parts 262, 264 and 265. Therefore, in the interest of clarity, we describe all of the changes associated with the hazardous waste manifest in Section V.C.10.

When the 40 CFR part 267 standards for owners and operators of hazardous waste facilities operating under a standardized permit were promulgated in September, 2005, EPA failed to make conforming changes to certain paragraphs in 40 CFR parts 260–263 and 266. This rule addresses that inadvertent oversight. Affected sections are identified at the end of Section V.C.7.

Today's Direct Final rule is similar to the Final rule published on July 14, 2006. See 71 FR 40254, Parts 260, 261 *et al.* Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; Final rule. EPA continues to review its regulations for additional technical corrections or errors and will address any such edits in forthcoming rules.

Today's action makes approximately 90 changes to 40 CFR parts 260–266, 268 and 270. References to the 40 CFR sections where technical corrections are being made are organized by part. In addition, EPA provides a description and explanation of the changes in the preamble to today's Direct Final rule.

C. Description of Direct Final Amendments to Parts 260–266, 268 and 270

1. Corrections to 40 CFR Part 260 (Hazardous Waste Management System: General)

In 40 CFR part 260, EPA is amending the following sections in order to make a number of changes: Section 260.10 and Appendix I

a. 40 CFR 260.10: In 40 CFR part 260, EPA is amending 40 CFR 260.10 to correct the date cited in the definition of "*New hazardous waste management facility* or *new facility*." The date is changed from "October 21, 1976" to "November 19, 1980." This date refers to the date a facility began operation, or for which construction commenced.

A review of the May 19, 1980 preamble to the first set of RCRA hazardous waste regulations shows that EPA was aware that the October 21, 1976 date specified in the statute was an unrealistic date to establish, and anticipated statutory amendments to correct this problem. Specifically, in May 1980, EPA wrote:

"Definition of Existing Facility"

Several commenters pointed out what they perceived as a serious fault in Section 3005(e) of RCRA, which is that the Section limits interim status to owners and operators of facilities "in existence" on or before October 21, 1976. The statute requires that, in order to operate legally, facilities which have come into existence after October 21, 1976, must obtain a permit by the effective date of the Section 3005 regulations (*i.e.,* within 180 days after the promulgation date of the regulations). Because it is unlikely that permits can be issued within 180 days for all facilities not "in-existence" by October 21, 1976, the commenters felt that the language of the statute was unfair to the owners and operators of these facilities.

"EPA agrees that the language of the statute as it now stands would make the RCRA program unworkable. However, the language of RCRA is clear and EPA has had no alternative but to follow it in the regulations. As the preamble to the Part 122 regulations discusses, EPA expects that amendments to RCRA now in conference will be passed shortly and will cure this problem." (45 FR 33068, May 19, 1980)

RCRA Section 3005(e) related to Interim Status facilities was amended to correct this problem. Section 3005(e)(1) now reads: "Any person who—(A) owns or operates a facility required to have a permit under this section which facility—(i) was in existence on November 19, 1980, or (ii) is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit under this section * * * shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator * * *."

Therefore, EPA is amending § 260.10 to make this conforming change by revising the date "October 21, 1976" to read "November 19, 1980." More specifically, the regulatory citation will read as follows:

"*New hazardous waste management facility* or *new facility*" means a facility which began operation, or for which construction commenced after November 19, 1980."

Note that the definition at § 260.10 for "Existing hazardous waste management facility" includes the correct date (*i.e.,* November 19, 1980), which further supports this conforming change.

b. 40 CFR part 260, Appendix I: In 40 CFR part 260, EPA is deleting the appendix entitled, Appendix I to Part 260: Overview of Subtitle C Regulations, which includes a brief discussion of the hazardous waste regulations, along with associated Figures 1–4. This Appendix was initially developed when the hazardous waste regulations were first promulgated in May 1980. Since then, the regulations have changed a number of times and this Appendix is no longer accurate. Therefore, we are deleting it to avoid any confusion.

2. Corrections to 40 CFR Part 261 (Identification and Listing of Hazardous Waste)

In 40 CFR part 261, EPA is amending the following sections in order to correct typographical errors, include correct citations, and incorporate conforming changes: Sections 261.1, 261.2, 261.4, 261.5, 261.6, 261.7, 261.23, 261.30, 261.31, 261.32, 261.33 and Appendix VII to part 261.

a. 40 CFR 261.1(c)(10): In 40 CFR part 261, EPA is amending this paragraph to correct a citation error by revising "§ 261.4(a)(13)" to read "§ 261.4(a)(14)" in the parenthetical note at the end of paragraph (c)(10). 40 CFR 261.1(c)(10) defines "Processed scrap metal." As part of this definition, the parenthetical note at the end of the paragraph states:

"(**Note:** shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(13))."

However, § 261.4(a)(13) relates to excluded scrap metal, not shredded circuit boards. The correct citation for shredded circuit boards being recycled is found at § 261.4(a)(14). Thus, we are correcting this incorrect citation.

b. 40 CFR 261.2(c), Table 1: In 40 CFR part 261, EPA is amending § 261.2(c), Table 1 by removing the phrase, "Scrap metal other than excluded scrap metal (see 261.1(c)(9))" and replacing it with "Scrap metal that is not excluded under § 261.4(a)(13)." This change more concisely describes scrap metal that is subject to the RCRA Subtitle C regulations, namely regulated scrap metal. This phrase also is consistent with paragraph 40 CFR 261.6(a)(3)(ii) related to the requirements for regulated scrap metal.

c. 40 CFR 261. 4(a)(17)(vi): In 40 CFR part 261, EPA is amending § 261.4(a)(17)(vi) to correct a citation error by revising the citation "paragraph (a)(7)" to read "paragraph (b)(7)."

The reference to "paragraph (a)(7)," which relates to spent sulfuric acid, was incorrectly revised in the final rule published in 67 FR 11254 (March 13, 2002) and should have properly referred to paragraph (b)(7). Thus, we are correcting this incorrect citation.

d. 40 CFR 261.5(e)(1): In 40 CFR part 261, EPA is amending this paragraph to read, "A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e)."

This change removes a reference to acute hazardous wastes listed under "§ 261.32," because currently, there are no acute hazardous wastes listed in § 261.32.

e. 40 CFR 261.5(e)(2): In 40 CFR part 261, EPA is amending this paragraph to remove the reference to acute hazardous wastes listed under "§ 261.32," because, as noted previously, there are no acute hazardous wastes listed in § 261.32.

EPA is also amending the parenthetical comment at the end of § 261.5(e)(2) to correct the term "generators of greater than 1,000 kg" to read "generators of 1,000 kg or greater" and to eliminate the redundant term "non-acutely."

Specifically, § 261.5(e) addresses those amounts of acute hazardous waste that are subject to full regulation under 40 CFR parts 262–268, 270, and 124, and the notification requirements of Section 3010 of RCRA. At the end of § 261.5(e)(2) is a comment which reads:

[Comment: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

This comment describes full regulation as regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month (a large quantity generator), but 40 CFR 262.34(d) lists conditions for facilities who generate greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month (*e.g.,* a small quantity generator). Therefore, facilities that generate exactly 1,000 kg are not included in either range. At 40 CFR 262.34(g) and (h), we state that generators who generate 1,000 kilograms of hazardous waste per month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to generators of wastewater treatment sludges from electroplating operations (EPA Hazardous Waste No. F006)) are subject to the same regulatory standards. Likewise, at 40 CFR 262.34(j), we state that generators who generate 1,000 kilograms of hazardous waste per calendar month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to members of the Performance Track program) are subject to the same regulatory standards.[1] Therefore, our intent always has been to regulate facilities generating exactly 1,000 kilograms of hazardous waste in a calendar month the same as those generators who generate greater than 1,000 kilograms of hazardous waste in a calendar month (*i.e.,* large quantity generators) rather than the requirements for facilities generating greater than 100 kilograms in a calendar month, but less than 1,000 kilograms of hazardous waste in a calendar month, (*i.e.,* small quantity generators). Clarifying the parenthetical comment at the end of § 261.5(e)(2) resolves the inconsistency that exists between this comment and §§ 262.34(d), 262.34(g), 262.34(h) and 262.34(j).

Also, since this comment refers to non-acute hazardous wastes, use of the term "non-acutely" is redundant and unnecessary.

f. 40 CFR 261.5(f): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This change clarifies that the relevant paragraphs of section 261.5 (e) are both (e)(1) and (e)(2). The current regulation references paragraph (e)(1) or (2).

g. 40 CFR 261.5(g): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This paragraph currently refers to "in quantities of less than 100 kilograms of hazardous waste" which is inconsistent with 40 CFR 261.5 (a) which describes a conditionally exempt small quantity generator as one who generates no more than 100 kilograms of hazardous waste in a calendar month (*i.e.,* 100 kilograms or less). Thus, this change makes 40 CFR 261.5(g) consistent with 40 CFR 261.5(a).

h. 40 CFR 261.5(g)(2): In 40 CFR part 261, EPA is amending this paragraph to read, "The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;"

This change clarifies the amount of hazardous wastes a generator can generate in a calendar month and still be classified as a small quantity generator; *e.g.,* greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month. Similarly, this change is consistent with paragraphs § 262.34(d)–(f).[2]

i. 40 CFR 261.6(a)(2): In 40 CFR part 261, EPA is making a conforming change to add "268" to § 261.6(a)(2) so that it reads "* * * and all applicable provisions in parts 268, 270, and 124 of this chapter." This change is necessary to be clear that the requirements of part 268 are applicable to the subject of this provision (recycled wastes regulated under part 266). An examination of § 261.6(a)(3) clearly shows that the Agency was aware that Part 268 is applicable to recycled wastes. Thus, the failure to cite part 268 in paragraph (a)(2) was an oversight. A December 20, 1989 memo from EPA Headquarters to EPA Region 1 (RCRA Online 11482), a copy of which is included in today's docket, explained this oversight and the need to correct this error in a future rulemaking.

j. 40 CFR 261.6(a)(2)(ii): In 40 CFR part 261, EPA is amending § 261.6(a)(2)(ii) to read "Hazardous waste burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H)."

Specifically, § 261.6(a)(2) indicates which subparts of part 266 govern the management of certain recycled materials. Paragraph § 261.6(a)(2)(ii) currently indicates that hazardous waste burned for energy recovery in boilers and industrial furnaces is covered under Subpart H of part 266. Prior to 1991, hazardous waste burned for energy recovery was subject to Subpart D of part 266, and § 261.6(a)(2)(ii) specifically referred to Subpart D. In

[1] EPA terminated the Performance Track Program on May 14, 2009 (74 FR 22741) and thus the program's incentives, including the hazardous waste incentives, are no longer available. EPA plans to take steps to rescind the final rules that enabled these incentives.

[2] The Agency is also adding part 267 to this CFR section, *i.e.,* § 261.5(g). See discussion later in the preamble for the basis of this change.

1991, the boiler and industrial furnace rule expanded the scope of the part 266 boiler and industrial furnace regulations to address burning for both energy recovery and materials recovery, and the Subpart D regulations were replaced with regulations under Subpart H of part 266. The 1991 rule amended the reference in § 261.6(a)(2)(ii) from subpart D to subpart H of part 266, but inadvertently omitted the parallel conforming change to the text of (a)(2)(ii) to reflect the expanded scope of the regulations, which now cover both burning for energy recovery and burning for material recovery. This amendment makes that conforming change.

k. 40 CFR 261.7(a)(1), (a)(2), (b)(1) and (b)(3): In 40 CFR part 261, EPA is making conforming changes to §§ 261.7(a)(1) and (a)(2) to add "part 266."

Specifically, an examination of the **Federal Register** from 1980 to the present reveals that §§ 261.7(a)(1) and (a)(2) have been amended several times to include additional parts to the list of applicable regulations as the RCRA regulatory program evolved. As examples, paragraphs (a)(1) and (a)(2) of § 261.7 were amended in 1983 (48 FR 14294) to remove part 122 and substitute part 270; were amended in 1986 to include part 268 (the Land Disposal Restrictions program) (51 FR 40637); and were amended again in 2005 to incorporate part 267 (the Standardized Permit program) (70 FR 53453). However, references to part 266, which addresses Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, were not added when part 266 was promulgated. Because part 266 is one of the parts applicable to the wastes discussed in § 261.7, it should have been added to the lists of applicable parts. The Agency is now correcting this oversight.

In this section, EPA is also amending paragraphs (b)(1) and (b)(3) to remove the reference to acute hazardous wastes listed in "§ 261.32," because currently, there are no acute hazardous wastes listed in § 261.32.

l. 40 CFR 261.23(a)(8): In 40 CFR part 261, EPA is amending this paragraph to read, "It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53."

Specifically, 40 CFR 261.23(a)(8) cross-references Department of Transportation (DOT) regulations addressing forbidden explosives, Class A explosives, and Class B explosives. However, these cross-references are out of date with the current DOT regulations, and the referenced sections either no longer exist or no longer address these explosives. This change modifies the rule to provide the correct citations.

m. 40 CFR 261.30(d). In 40 CFR part 261, EPA is amending this paragraph to read, "The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027."

The existing paragraph indicates that acutely hazardous wastes are listed in § 261.31 and § 261.32. However, because there are no acute hazardous wastes currently listed in § 261.32, we are removing the reference to § 261.32.

n. 40 CFR 261.31: In 40 CFR part 261, EPA is amending the listing for EPA Hazardous Waste No. F037 by correcting the phrase "* * * oil cooling wastewaters" to read "* * * oily cooling wastewaters." It is clear from the 1990 and 1998 **Federal Register** notices promulgating and subsequently revising this listing that the correct phrase is "oily cooling wastewaters" (55 FR 46396 and 63 FR 42185, respectively). This phrase is also consistent with the listing description of F037 and F038 in the table in 40 CFR 268.40 and Table 302.4—List of Hazardous Substances and Reportable Quantities.

o. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the listing for K107, by correcting the misspelled chemical name "* * * carboxylic acid hydrazines" to read "* * * carboxylic acid hydrazides." That this is a misspelling is clear from the original listing background document supporting the K107 listing which discusses "carboxylic acid hydrazides." The proposed rule (December 20, 1984; 49 FR 49559) included this error in the listings for K107, K108, K109, and K110. The error was corrected in the final rule (May 2, 1990; 55 FR 18505) for all the listings except K107.

p. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the table in this section to remove the section headings that have no waste codes included: "*Primary Copper:* ", "*Primary Lead:*", "*Primary Zinc:* "; and "*Ferroalloys:*".

Specifically, the entries for Hazardous Waste Nos. K064 (Primary Copper), K065 (Primary Lead), K066 (Primary Zinc) and K090 and K091 (Ferroalloys) were removed from the table in 1999 (64 FR 56470, October 20, 1999; see also 63 FR 28599–29600, May 26, 1998). Although these were the only waste codes listed in the sections having the same title, the section headings were inadvertently not removed with the waste codes. Thus, they are being deleted in today's Direct Final rule.

q. 40 CFR 261.33(f): In 40 CFR part 261, EPA is amending this section to revise the listing for U239, "Benzene, dimethyl- (I,T)" to read "Benzene, dimethyl- (I)." Inclusion of the "T" (for toxicity) in the parentheses was an oversight because this chemical was listed only for ignitability ("I") and not for toxicity ("T"). This error was first identified in 1990, but the Agency failed to correct this error in previous technical correction rules (see memo from Scarberry to Kreider (April 5, 1990, RO115020), a copy of which is included in today's docket). This correction is also consistent with the same listing under the more common name for U239, "xylene," which has only an "I" in the parentheses.

r. Part 261, APPENDIX VII: In 40 CFR part 261, EPA is amending this section to remove the entries "K064," "K065," "K066," "K090," and "K091." In the final rule published in 64 FR 56470 (October 20, 1999), see also 63 FR 28599–29600, May 26, 1998, EPA removed these K-listed wastes from § 261.32, but failed to make the necessary conforming changes in Appendix VII of part 261. This amendment makes that conforming change.

3. Corrections to 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste)

In 40 CFR part 262, EPA is amending the following sections in order to clarify regulatory citations and address incorrect citations: Sections 262.10, 262.11, 262.23,[3] 262.34, 262.41, 262.42 and 262.60.[4]

a. 40 CFR 262.34(a): In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a) to read, "A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:"

Specifically, the current language in 40 CFR 262.34(a) fails to clarify that this paragraph applies to large quantity generators only—that is, generators who generate 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month. Small quantity generators can accumulate hazardous waste on site for 180 days (or 270 days

[3] Discussed under section V.C.10.

[4] **Note:** The changes at 40 CFR 262.10, 262.11 and 262.41 refer to the conforming change to include part 267.

if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without having interim status.

b. 40 CFR 262.34(a)(1)(iv)—as related to Closure: EPA is amending CFR 262.34(a) by moving a sentence from one portion of the regulation to another, more appropriate, portion of the regulation where it will be easier to find.

Specifically, EPA is moving the language that currently appears after 40 CFR 262.34(a)(1)(iv)(B) which states that generators accumulating hazardous waste on-site for 90 days or less without a permit or interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

This amendment is necessary because this sentence stating the requirements for large quantity generators closing their waste accumulation units is incorrectly and awkwardly found after 40 CFR 262.34 (a)(1)(iv)(B), when it should be elsewhere in the regulation. That is, this section of the regulations has no relationship to the closure requirements, but instead addresses the documentation needed by a large quantity generator accumulating hazardous waste in containment buildings to demonstrate that the unit has been emptied at least once every 90 days. Thus, requirements for large quantity generators closing their 90-day waste accumulation units should properly be located in another portion of this regulation. EPA has expressed this same intent in a Hotline document in the December 1998 Hotline Monthly Report entitled, Generator Closure Requirements, a copy of which is included in today's docket. (Also see RCRA Online 14321.[5])

EPA is moving this sentence to a new section 40 CFR 262.34(a)(5). This new location for this long-standing closure requirement for large quantity generators will make it less likely that users of the regulations will miss the provision and thus be unaware of its existence. Putting this sentence in a new subparagraph (5) of paragraph (a) following existing subparagraphs (1) through (4) also makes it much clearer that the closure provision is one of the five existing requirements applicable to large quantity generators accumulating waste on-site.

[5] RCRA Online is an electronic database of selected letters, memoranda, questions and answers, publications, and other outreach materials, written by EPA's Office of Solid Waste (now the Office of Resource Conservation and Recovery) since 1980.

c. 40 CFR 262.34(a)(2)—*as related to Marking:* In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a)(2) to read "each container and tank" instead of "each container."

Specifically, § 262.34(a)(3) makes clear that displaying the words "Hazardous Waste" is required for both containers and tanks accumulating waste, but the words "and tank" were inadvertently omitted from the text of § 262.34(a)(2) which discusses displaying the accumulation start date. In the preamble to the March 24, 1986 **Federal Register** (51 FR 10146 and 51 FR 10160), EPA makes clear that under 40 CFR 262.34 both containers and tanks must be marked with accumulation start dates. EPA also explained that both containers and tanks must be marked with accumulation start dates in the June 2003 RCRA Call Center Monthly Report, a copy of which is included in today's docket. This amendment corrects this omission.

d. 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4)—as related to the Land Disposal Restrictions (LDR): In 40 CFR part 262, EPA is amending these paragraphs by revising 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4) to delete "40 CFR 268.7(a)(5)" and substitute the words "all applicable requirements under 40 CFR part 268."

Both 40 CFR 262.34(a)(4) and 40 CFR 262.34 (d)(4) specifically state that large quantity generators and small quantity generators must comply only with 40 CFR 268.7(a)(5) of the land disposal restriction requirements. This provision addresses waste analysis plans. However, the limited reference to 40 CFR 268.7(a)(5) is in error. As stated elsewhere in the hazardous waste regulations, both small and large quantity generators are subject to the full land disposal restriction requirements program, and not just the requirement to develop waste analysis plans. For example, 40 CFR 262.11 points to the need for materials subject to the hazardous waste regulations to comply with all applicable regulations under 40 CFR part 268 (Land Disposal Restrictions). Similarly, 40 CFR 268.1(b) is clear that the LDR requirements "apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage and disposal facilities." Thus, EPA is correcting this error by revising these paragraphs to properly conform to the requirements elsewhere for large quantity generators and small quantity generators to comply with all applicable regulations under 40 CFR part 268.

e. 40 CFR 262.34(b): Consistent with the changes being made in section 262.34(a) of today's Direct Final rule, EPA is amending 40 CFR 262.34 by revising the first sentence of 40 CFR 262.34(b) to read, "A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267 and the permit requirements of 40 CFR 270 unless he has been granted an extension to the 90-day period." (See discussion in section V.3.a regarding paragraph 262.34(a) for explanation of change.)

f. 40 CFR 262.34(c)(1): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(1) to read: "A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraphs (a) or (d) of this section provided he:"

This revision clarifies that the satellite accumulation provisions for large quantity generators also are applicable to small quantity generators, and that this provision applies to acutely hazardous wastes listed under § 261.31 as well. As currently constructed, the regulatory citations at 40 CFR 262.34 associated with satellite accumulation are only found under the requirements for large quantity generators, or paragraph (a). The preamble to the final rule promulgating this provision published in the March 24, 1986 **Federal Register** makes clear that the satellite accumulation provisions also are applicable to small quantity generators. The regulatory text omitted the appropriate reference to implement this intent. See 51 FR 10162. In addition, other EPA documents state that the satellite accumulation provisions apply to small quantity generators as well. See, for example, Memorandum from Robert Springer, Director Office of Solid Waste to Regions 1–10, *Frequently Asked Questions about Satellite Accumulation Areas,* March 17, 2004 (RO 14703), a copy of which is included in today's docket.

With respect to including acutely hazardous wastes listed under § 261.31, when the dioxin listings for acutely

hazardous wastes listed under § 261.31 were promulgated in 1985 (see 50 FR 2000), we failed to make conforming changes to the satellite accumulation regulations found at 40 CFR 262.34 (c)(1) and (c)(2) which were promulgated in 1984. This amendment corrects this omission.

g. 40 CFR 262.34(c)(2): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(2) to read: "A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter.

During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating."

This amendment makes the conforming change discussed above (section V.3.f.) for 40 CFR 262.34(c)(1).

h. 40 CFR 262.42(a)(1), (a)(2), and (c)—Exception Reporting: In 40 CFR part 262, EPA is amending both 40 CFR 262.42(a)(1) and (a)(2) to read, "A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month * * *" Also, EPA is adding paragraph (c) to this section to require a generator to comply with this provision when a designated facility re-ships a generator's hazardous waste shipment of rejected loads or container residues to an alternate facility for further hazardous waste management. This correction is discussed in Section V.C.10 below, along with other corrections and clarifications to the hazardous waste manifest regulations.

Specifically, the current language in paragraphs (a)(1) and (a)(2) at 40 CFR 262.42 incorrectly describes the exception reporting requirements as applying only to generators of "greater than 1000 kilograms of hazardous waste" in a calendar month, when it should properly address such requirements for large quantity generators (*i.e.,* those generators generating 1,000 kilograms or greater of hazardous waste or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month). These amendments are further supported by the language in paragraphs § 262.34(d), § 262.34(g), § 262.34(h) and § 262.34(j) cited under 40 CFR 261.5(e).

i. 40 CFR 262.60(b)—Imports of Hazardous Waste: In 40 CFR part 262, EPA is amending 40 CFR 262.60(b) to replace "§ 262.20 (a)" with "§ 262.20."

Specifically, paragraph 262.60(b) incorrectly states that "when importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that * * *" However § 262.20(a) is only one component of the hazardous waste manifest requirements that facilities must meet in either transporting or importing hazardous wastes. To comply with this requirement only, and no other, would be a violation of the hazardous waste manifest requirements. EPA made this error in the original import regulations (see 51 FR 28685, August 8, 1986) and is now amending this section to reflect the Agency's intent.

4. Corrections to 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 264, EPA is amending the following sections in order to include correct citations, clarify regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes: Sections 264.52, 264.56, 264.72,[6] 264.314, 264.316, and 264.552.

a. 40 CFR 264.52—Content of contingency plan: EPA is amending § 264.52(b) by removing the phrase "or part 1510 of chapter V," since part 1510 of chapter V no longer exists.

b. 40 CFR 264.56—Emergency Procedures: Consistent with the change being made in 40 CFR 264.52, EPA is amending § 264.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)," since this provision no longer exists.

c. 40 CFR 264.314(d) and 264.316(b): The Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph (a) in § 264.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 264.314(d) from "(e)(1)" to "(d)(1)" and "(e)(2)" to "(d)(2)," and failed to update the cross-reference in § 264.316(b) from "§ 264.314(e)" to "§ 264.314(d)". Today's rule corrects these errors.

[6] Discussed under Section V.C.10.

d. 40 CFR 264.552(a)(3): As discussed under 40 CFR 264.314 (section V.4.c), the Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph 264.314(a) and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in § 264.552 to these re-designated paragraphs. Today's rule corrects this as follows: Paragraph 264.552(a)(3)(ii) revises the citation "§ 264.314(d)" to read "§ 264.314(c)"; paragraph 264.552(a)(3)(iii) revises the citation "§ 264.314(f)" to read "§ 264.314(e)"; and paragraph 264.552(a)(3)(iv) revises the citation "§ 264.314(c)" to read "§ 264.314(b)" and "§ 264.314(e)" to read "§ 264.314(d)."

e. 40 CFR 264.552(e)(4)(iv)(F): Today's rule revises the citation in § 264.552(e)(4)(iv)(F) from "260.11(a)(11)" to read "260.11(c)(3)(v)." The Corrective Action Management Units (CAMUs) final rule (67 FR 3025, January 22, 2002), in § 264.552(e)(4)(iv)(F), provided for a variance from the "Toxicity Characteristic Leaching Procedure" (TCLP), SW846 Method 1311, and incorrectly cited "40 CFR 260.11(11)" for Method 1311. This reference was an improper citation format. It should have read "40 CFR 260.11(a)(11)." EPA then significantly reorganized and revised 40 CFR 260.11 (70 FR 34538, June 14, 2005), without making the corresponding revision to the citation in § 264.552(e)(4)(iv)(F). However, the June 14, 2005 revision (at 70 FR 34560) also added a new § 260.11(c)(3)(v) referencing Method 1311. The EPA CFR Corrections rule (71 FR 40273, July 14, 2006) corrected the original § 264.552(e)(4)(iv)(F) citation to read "40 CFR 260.11(a)(11)," the paragraph that in 2002 correctly referred to SW846, which includes Method 1311. But, because of the June 14, 2005 revisions, the correct citation in the July 14, 2006 CFR corrections rule should have been "§ 260.11(c)(3)(v)."

5. Corrections to 40 CFR Part 265 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 265, EPA is amending the following sections in order to include correct citations, clarify particular regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes:

Sections 265.52, 265.56, 265.72,[7] 265.314 and 265.316.

a. 40 CFR 265.52—Content of contingency plan: EPA is amending § 265.52(b) by removing the phrase "or part 1510 of chapter V," since part 1510 of chapter V no longer exists.

b. 40 CFR 265.56—Emergency Procedures: Consistent with the change being made in 40 CFR 265.52, EPA is amending § 265.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)," since the provision no longer exists.

c. 40 CFR 265.314(e) and 265.316(b): As discussed under the sections on 40 CFR 264.314 and 264.316 above (section V.4.c), today's rule corrects some errors made in the Burden Reduction Rule (71 FR 16912, April 4, 2006) in 40 CFR 264.314(e) and 264.316(b). We are also making the same corrections to the corresponding part 265 provisions, which are identical in language to the part 264 provisions. Specifically, the 2006 Burden Reduction Rule deleted obsolete paragraph (a) in § 265.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (g) became re-designated as paragraphs (a) through (f). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 265.314(e) from "(f)(1)" to "(e)(1)" and "(f)(2)" to "(e)(2)," and failed to update the cross-reference in § 265.316(b) from "§ 265.314(f)" to "§ 265.314(e)." Today's rule corrects these errors.

6. Corrections to 40 CFR Part 266 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities)

In 40 CFR part 266, EPA is amending the following section in order to make a necessary conforming change: Section 266.20.

40 CFR 266.20—Subpart C—Recyclable Materials Used in a Manner Constituting Disposal: EPA is amending § 266.20(b) by adding at the end of this paragraph the phrase, "and the recycler complies with § 268.7(b)(6)."

Specifically, when EPA promulgated § 268.7(b)(6), the Agency failed to make the conforming change at § 266.20(b) to clarify that the recycler must comply with the one-time certification requirement described at § 268.7(b)(4) for the initial shipment of the waste, and a one-time notification under paragraph § 268.7(b)(3). This correction addresses this oversight.

[7] Discussed under Section V.C.10.

7. Conforming Changes To Include Reference to Part 267 in Different Sections of Parts 261, 262, 263, and 266.

In 2005, EPA promulgated 40 CFR part 267, which provides alternative management standards for owners and operators of certain types of hazardous waste treatment and storage facilities operating under a special type of permit—that is, the standardized permit. Management includes storing or non-thermally treating hazardous waste on-site in tanks, containers or containment buildings, or receiving hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then storing or non-thermally treating the hazardous waste in containers, tanks, or containment buildings. (See 40 CFR 270.255.) When EPA promulgated this rule, the Agency inadvertently failed to make a number of conforming changes to other parts of the RCRA hazardous waste regulations that were affected by this new rule. In particular, there are various paragraphs throughout parts 261, 262, 263 and 266 where the phrase, "parts 262 through 266, 268, and parts 270 and 124," or variations appear. When part 267 was promulgated, this phrase should have been amended in the applicable paragraphs to add part 267 and reflect this change. The following paragraphs are amended to correct this oversight:

—§ 261.5(b), (e) and (f)(2), and (g)(2)
—§ 261.6(a)(3), (c)(1) and (d)
—§ 261.7(a)(2)
—§ 261.30(c)
—§ 262.10(f), (j)(1) and (k).
—§ 262.11(d)
—§ 262.34(b), (f), and (i)
—§ 262.41(b)
—§ 263.12
—§ 266.22, 266.70(d), 266.80(b), 266.101(c)(1) and (c)(2)

8. Corrections to Part 268 (Land Disposal Restrictions)

EPA is amending the following sections of 40 CFR part 268 in order to make a number of changes: Sections 268.40 and 268.48.

b. 40 CFR 268.40: In 40 CFR 268.40, EPA is amending the table, Treatment Standards for Hazardous Wastes, by revising the wastewater concentration associated with the regulated hazardous constituent, vinyl chloride, for F025 to read "0.27," and by revising the wastewater concentration associated with the regulated hazardous constituent, arsenic, for K031 to read "1.4." With respect to F025, 63 FR 28657–58 identified the wastewater concentration for vinyl chloride to be 0.27 mg/L. With respect to K031, the preamble to the Universal Treatment Standards at 59 FR 48000, and confirmed at 59 FR 48070 for the table, Treatment Standards for Hazardous Wastes found in 40 CFR 268.40, the correct concentration for the regulated hazardous constituent, arsenic, is 1.4 mg/L for K031. Whether through a printing error, or inadvertent technical error, the concentrations for vinyl chloride and arsenic under F025 and K031 were changed in subsequent CFR publications to "0.027" and "14," respectively. These changes correct those inadvertent errors.

In 40 CFR 268.40, EPA is also amending the table, Treatment Standards for Hazardous Wastes, for the waste codes K156, K157 and K158 by reinserting the parenthetical sentence, "(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)" As a result of the November 1, 1996, ruling of the United States Court of Appeals for the District of Columbia Circuit in *Dithiocarbamate Task Force* v. *EPA,* EPA added to the 40 CFR 268.40 table "Treatment Standards for Hazardous Wastes," at the end of the "Waste description * * *" column for the entries for K156, K157, and K158, the parenthetical sentence "(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate)." (See 62 *FR* 32979, June 17, 1997.) This same parenthetical sentence was also added by the June 17, 1997 **Federal Register** notice under the entries for K156, K157, and K158 in the following two tables: 40 CFR 261.32 Listed hazardous wastes from specific sources and 40 CFR Table 302.4 List of Hazardous Substances and Reportable Quantities (62 FR 32977 and 32980, respectively). This parenthetical sentence still exists in these latter two tables, but was inadvertently deleted from the § 268.40 table under all three entries (K156–158) by 63 FR 28706–8, May 26, 1998. The purpose of this section of the **Federal Register,** as discussed in the preamble at 63 FR 28623, was to modify the entry in the § 268.40 table for U108; there was no mention of any revisions to the entries for K156–158. Yet when this table was recreated to reflect the U108 revision, the parenthetical sentence at the end of K156–158 was inadvertently deleted.

b. 40 CFR 268.48: At 59 FR 48103, September 19, 1994, EPA added § 268.48 and a table containing Universal Treatment Standards, including treatment standard entries in the table for "bis(2-Ethylhexyl)phthalate" and for "Hexachloropropylene." The entries for these two chemicals appear in the 1995–

1998 Code of Federal Regulations. They also appear in this same table in the 1998 Phase IV Land Disposal Restrictions (LDR) Final Rule (63 FR 28744, May 26, 1998). By mistake, these entries do not appear in the same table in the 1999 Code of Federal Regulations, or in any CFR since then. There are no FR notices removing these entries. EPA is today restoring these two entries as they first appeared in 1994, and continued unchanged through 1998.

9. Corrections to Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program)

EPA is amending the following section of 40 CFR part 270 in order to make a necessary change: Section 270.4.

40 CFR 270.4(a): Today's rule restores the following sentence at the end of § 270.4(a): "However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42." (except that today's rule deletes the introductory word "However,"). The first part of this sentence was promulgated on April 1, 1983 (48 FR 14232). EPA attempted to add the last phrase of this sentence on September 28, 1988 (53 FR 37935), but was not able to because EPA had inadvertently deleted the first part of this sentence December 1, 1987 (52 FR 45799). In order to reinstate the missing sentence, EPA is today re-designating the introductory text of paragraph (a) as (a)(1); re-designating paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) as paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(1)(iv), respectively; and reinstating the missing sentence in a new paragraph (a)(2).

10. Corrections To Manifest Regulations

Today's rule corrects certain omissions and an error in the final manifest rule that was published on March 4, 2005 (See 70 FR 10776).

The March 2005 manifest rule (manifest rule) inadvertently omitted certain requirements that were intended for inclusion, and that relate to the use of a manifest in shipments of rejected hazardous wastes or non-empty containers containing regulated residues ("container residues"). In addition, the manifest rule contained an error regarding a designated facility's preparation of a new manifest in certain returned shipment situations. Today's rule corrects these omissions and this error as follows:

1. The generator must confirm receipt of a returned shipment of rejected hazardous wastes or container residues by sending a copy of the final hazardous waste manifest that accompanied the shipment, whether it was a new manifest or the generator's original manifest, to the designated facility. Today's rule adds a new paragraph (f) to 40 CFR 262.23 to reflect this requirement.

The preamble to the May 22, 2001 proposed manifest rule (66 FR 28240) explained the importance of ensuring that a shipment returned to the generator be verified by the designated facility. Hence, it would be necessary for the generator to send to the designated facility a copy of the final manifest. However, the March 2005 final rule regulatory text inadvertently omitted this requirement for the generator to send a final copy of the manifest to the designated facility, even though the proposed rule preamble discussion clearly intended this requirement. Today's rule corrects this inadvertent omission.

2. The generator must sign and date the manifest accompanying the returned shipment of rejected hazardous wastes or container residues, provide the transporter with a copy of the manifest, and retain a copy of the manifest for three years. New paragraph (f) to 40 CFR 262.23, described previously in item 1, reflects these requirements as well.

In the appendix to part 262, the instructions for completing the manifest require the generator to sign and date the manifest for returned shipments involving the original manifest (generator must sign and date Item 18c of the original manifest) or a new manifest (generator must sign and date Item 20 of the new manifest). Moreover, EPA intended to include all of these same requirements (which generators must currently meet under the manifest instructions) to the regulatory text of the final manifest rule for returned shipments for the purpose of completion, but inadvertently omitted these requirements. Today's rule corrects these inadvertent omissions.

3. The generator must comply with the Exception reporting requirements of 40 CFR 262.42(a) or (b) when a designated facility forwards its hazardous waste or container residues to an alternate facility under a new manifest. Today's rule adds a new paragraph (c) to 40 CFR 262.42 to reflect this requirement.

The current exception reporting requirements in 40 CFR § 262.42 require a generator to file an exception report when a copy of that signed original manifest is not received from the designated facility within the specified time frame. EPA also intended to include, but inadvertently omitted in the 2005 final manifest rule, exception reporting for hazardous waste shipments forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of CFR 264.72(e)(1)–(6)). Specifically, EPA intended to require the generator to comply with the exception reporting requirements of 40 CFR 262.42 (a) or (b) when a designated facility forwards rejected wastes or container residues to an alternate facility using a new manifest. Today's rule corrects this inadvertent omission.

4. The designated facility must mail to the generator a signed copy of the new manifest included with the shipments of rejected loads or container residues that are re-shipped to an alternate facility by the designated facility under a new manifest. Today's rule amends paragraph (e)(6) of 40 CFR 264.72 and 40 CFR 265.72 to reflect this requirement.

When a designated facility forwards to an alternate facility shipments of rejected loads or container residues under a new manifest, it is important for the designated facility also to send the generator a copy of the new manifest indicating the date on which the shipment was accepted by the initial transporter that is transporting the rejected hazardous waste or container residues to the alternate facility. Otherwise, the generator cannot reasonably determine that the alternate facility received the shipment in the appropriate time frame in order to fulfill its various obligations under the manifest regulations. EPA intended to include, but inadvertently omitted, this requirement in the manifest rule. Today's rule corrects this inadvertent omission.

5. The designated facility must enter its own information (instead of the generator's information) in Item 5 of the new manifest form when it originates the shipments of rejected hazardous waste or container residues. Today's rule amends 40 CFR 264.72(f)(1) and 265.72(f)(1) to correct this error.

This approach provides the most straightforward facility-to-generator tracking of waste shipments and was explained in the preamble to the May 22, 2001, proposed rule (66 FR 28240). In response to requests for clarification of this issue from the regulated community and State waste management officials, EPA's Office of Solid Waste (OSW) issued a memorandum (May 14, 2007) from Matt Hale, OSW Office Director, to the Regional Waste Division Directors and RCRA Enforcement Managers acknowledging this error and recommending that manifests should be

considered compliant if, in cases of rejected wastes and container residues, designated facilities entered their own information in Item 5 of the new manifest. In addition, the memo indicated that EPA would correct this error in the future. A copy of this memo is in the Docket for this rulemaking.

6. The designated facility using a new manifest to return a full load or partial load of rejected hazardous wastes, or container residues, to the generator must comply with the exception reporting provisions of 40 CFR 262.42(a). Today's rule adds new paragraph (f)(8) to 40 CFR 264.72 and 265.72 to reflect this requirement. Today's rule also makes a necessary conforming amendment to paragraph (f)(7) to 40 CFR 264.72 and 40 CFR 265.72 to reference new paragraph (f)(8).

Under today's rule, the designated facility must file an exception report in situations when a completed copy of the manifest is not received from the generator within 35 days of the date that the shipment was accepted by the initial transporter transporting the shipment. This requirement ensures that the shipment returned to the generator can be verified by the designated facility, as explained in the preamble to the May 22, 2001 proposed manifest rule. EPA intended to include, but inadvertently omitted, this requirement in the initial manifest rule of March 4, 2005. Today's rule corrects this inadvertent omission.

Table 1 provides a summary of the manifest technical corrections.

TABLE 1—MANIFEST RELATED OMISSIONS AND INACCURACIES CORRECTED IN TODAY'S DIRECT FINAL RULE

Citation	Action in today's final rule	Summary of added or corrected provision	Type of shipment affected (RW&CR = rejected waste and container residues)
262.23(f)	Add new paragraph (f)	Generator (recipient of shipment) must: ..... —sign/complete the manifest. —provide a copy of the completed manifest to transporter. —send a copy of the completed manifest to the Designated Facility (originator of shipment). —keep a copy of completed manifest.	RW&CR returned from Designated Facility to Generator using a new or an original manifest.
262.42(c)	Add new paragraph (c).	Generator must file an exception report if a copy of the signed new manifest is not received from the alternate facility within a specified time frame.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(e)(6) and 265.72 (e)(6).	Add new provision to existing paragraph (6).	Designated Facility must send copy of new manifest to the Generator.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(f)(1) and 265.72 (f)(1).	Correct paragraph (1)	Designated Facility must enter its own information in Box 5 of the manifest.	RW&CR returned from Designated Facility to Generator using a new manifest.
264.72(f)(7) and 265.72 (f)(7).	Correct references in paragraph (7).	Designated Facility using original manifest need not comply with new paragraph (8).	RW&CR returned from Designated Facility to Generator using the original manifest.
264.72(f)(8) and 265.72 (f)(8).	Add new paragraph (8).	Designated Facility must comply with the exception reporting requirements for shipments returned to the Generator.	RW&CR returned from Designated Facility to Generator using a new manifest.

VI. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer its own hazardous waste program within the State in lieu of the Federal program. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their program only when EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Today's Direct Final rule finalizes technical corrections to a number of the regulations in 40 CFR parts 260–266, 268 and 270 that are being promulgated in part under the authority of HSWA, and in part under non-HSWA authority. Thus, the technical corrections and clarifications finalized today under non-HSWA authority would be applicable on the effective date only in those States that do not have final authorization of their base RCRA programs. The technical corrections to regulations in part 268 are promulgated under the authority of HSWA and would be

effective on the effective date of this Direct Final rule in all States unless the State is not authorized for the underlying provisions. Moreover, authorized States are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their program. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's Direct Final rule is considered to be neither more nor less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt the technical corrections promulgated today, although we would strongly urge the States to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

One exception to the above discussion concerns clarifications of the manifest regulations in 40 CFR 262.23. All authorized States will be required to adopt these revisions in accordance with the consistency requirements in 40 CFR 271.4(c). See 70 FR 10811, March 4, 2005 for a further discussion of this provision.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." Accordingly, EPA did not submit this action to the Office of Management and Budget (OMB) for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. As described in the preamble, while the recordkeeping and reporting requirements related to the manifest are not considered new requirements, we nevertheless discuss the information collection burden under the provisions of the *Paperwork Reduction Act* with respect to this action.

The manifest amendments in this action impose recordkeeping and reporting burden to generators and designated facilities subject to these manifest changes. However, EPA believes that the burden impacts are minimal since the changes apply only to rejected load shipments and container residue shipments that require the completion of a new hazardous waste manifest. EPA estimates that each manifest completed and sent off site by a generator (2,074,900) will be delivered to the designated treatment, storage or disposal facility (TSDF), minus those manifests accompanying export shipments (19,509 manifests) or lost during transport (173 manifests). Hence, USEPA estimates that 2,055,218 manifests will be delivered to the designated TSDF. EPA estimates that 3% of these shipments will be classified as rejected loads or container residue shipments, and that 50% of these shipments would be affected by the manifest regulatory amendments in this action. Approximately 99% of these shipments (30,519) will be sent to an alternate facility, and the remaining 1% (308) of these shipments will be returned to the generator. Most of the incremental burden increase will result from the proposed changes applicable to the estimated 30,519 hazardous waste shipments forwarded to an alternate facility. However, EPA expects that the total national hourly burden will be minimal (4,578) hours, since for each affected shipment the respondent activity associated with the changes should require, at most, nine minutes of clerical staff time.

EPA believes that the potential recordkeeping and reporting burden associated with hazardous waste shipments returned to the generator will be negligible since the proposed changes will only affect 308 shipments annually, and only an extremely small fraction of those returned shipments will require the completion, submission, and recordkeeping of an exception report.

As a result of a small increase in the number of burden hours, EPA has submitted a nonsubstantive change request to the Office of Management and Budget (OMB) that will modify the information collection request (ICR) entitled, "Requirements for Generators, Transporters, and Waste Management Facilities under the RCRA Hazardous Waste Manifest System" (EPA ICR #0801.16; OMB Control No. 2050–0039) to account for this overall change in manifest burden hours. Burden is defined at 5 CFR 1320.3(b).

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 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 Direct Final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action simply corrects typographical errors, incorrect citations, omissions provides clarifications, and makes conforming changes where they have not been made previously.

Although this Direct Final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and

tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This Direct Final rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because this rule corrects errors in the CFR and clarifies existing regulatory language.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because it is not based on environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this Direct Final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. These types of changes to the rule do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

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

by 5 U.S.C. 804(2). This action is effective June 16, 2010.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 260.10 [Amended]

■ 2. Amend § 260.10, the definition of "*New hazardous waste management facility* or *new facility*" by removing the date "October 21, 1976" and adding in its place the date "November 19, 1980".

Appendix I [Removed]

■ 3. Amend part 260 by removing Appendix I.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

§ 261.1 [Amended]

■ 5. Amend § 261.1(c)(10) by removing the citation "§ 261.4(a)(13)" and adding in its place the citation "§ 261.4(a)(14)".

■ 6. Amend § 261.2(c), Table 1, by removing the entry for "Scrap metal other than excluded scrap metal (see 261.1(c)(9))" and adding in its place the entry "Scrap metal that is not excluded under § 261.4(a)(13)" to read as follows:

§ 261.2 Definition of Solid Waste

* * * * *

(c) * * *

TABLE 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in §§ 261.2(a)(2)(ii), 261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(25)	Speculative accumulation (§ 261.2(c)(4))
	1	2	3	4
* * *	*	*	*	*
Scrap metal that is not excluded under § 261.4(a)(13)	(*)	(*)	(*)	(*)
* * *	*	*	*	*

* * * * *

§ 261.4 [Amended]

■ 7. Amend § 261.4, paragraph (a)(17)(vi) by removing the citation "(a)(7)" and adding in its place the citation "(b)(7)".

■ 8. Amend § 261.5 as follows:

■ a. By revising paragraph (b).

■ b. By revising paragraph (e).

■ c. By revising paragraph (f) introductory text.

■ d. By revising paragraph (f)(2).

■ e. By revising paragraph (g) introductory text.

■ f. By revising paragraph (g)(2)

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA, provided the generator complies with

the requirements of paragraphs (f), (g), and (j) of this section.

* * * * *

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, or 261.33(e).

Note to paragraph (e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

* * * * *

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(a) of this chapter, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

* * * * *

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;

* * * * *

■ 9. Amend § 261.6 as follows:

■ a. By revising paragraph (a)(2) introductory text.

■ b. By revising paragraph (a)(2)(ii).

■ c. By revising paragraph (a)(3) introductory text.

■ d. By revising paragraph (c)(1).

■ e. By revising paragraph (d).

The revisions read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 268, 270, and 124 of this chapter.

* * * * *

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H);

* * * * *

(3) The following recyclable materials are not subject to regulation under parts 262 through parts 268, 270 or 124 of this chapter, and are not subject to the notification requirements of section 3010 of RCRA:

* * * * *

(c) (1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A though L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 267, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

* * * * *

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264, 265 or 267 of this chapter.

■ 10. Amend § 261.7 as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraph (b)(1) introductory text.

■ c. By revising paragraph (b)(3) introductory text.

The revisions read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 268, 270, or 124 this chapter or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under parts 261 through 268, 270 and 124 of this chapter and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31 or 261.33(e) of this chapter is empty if:

* * * * *

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31 or 261.33(e) is empty if:

* * * * *

■ 11. Amend § 261.23 by revising paragraph (a)(8) to read as follows:

§ 261.23 Characteristic of reactivity.

(a) * * *

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

* * * * *

■ 12. Amend § 261.30 by revising paragraphs (c) and (d) to read as follows:

§ 261.30 General.

* * * * *

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under parts 262 through 265, 267, 268, and 270 of this chapter.

(d) The following hazardous wastes listed in § 261.31 are subject to the

exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

■ 13. In § 261.31(a), the table is amended by revising the entry for F037 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of.	(T)
*	*	*

* * * * *

■ 14. In § 261.32(a), the table is amended as follows:

■ a. Under the heading "organic chemicals", revise the entry for "K107".

■ b. Remove the heading "Primary copper:".

■ c. Remove the heading "Primary lead:".

■ d. Remove the heading "Primary zinc:".

■ e. Remove the heading "Ferroalloys:".

The revision reads as follows:

§ 261.32 Hazardous wastes from specific sources

* * * * *

(a)* * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
	Organic chemicals	
*	*	*
K107	Column bottoms from product separation from the production of 1,1 dimethylhydrazine (UDMH) from carboxylic hydrazides.	(C,T)
*	*	*

* * * * *

■ 15. In § 261.33(f), the table is amended by revising the entry for U239 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	*
U239	1330–20–7	Benzene, dimethyl- (I)
*	*	*

* * * * *

Appendix VII [Amended]

■ 16. Section 261, Appendix VII is amended by removing in its entirety the entries for EPA Hazardous Waste Nos. "K064," "K065," "K066," "K090," and "K091".

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 17. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 18. Amend § 262.10 as follows:

■ a. By revising paragraph (f).

■ b. By revising paragraph (j)(1) introductory text (table remains unchanged).

■ c. By revising paragraph (k).

§ 262.10 Purpose, scope and applicability.

* * * * *

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.70 is not required to comply with other standards in this part or 40 CFR parts 270, 264, 265, 267, or 268 with respect to such pesticides.

* * * * *

(j)(1) Universities that are participating in the Laboratory XL project are the University of Massachusetts Boston in Boston, Massachusetts, Boston College in Chestnut Hill, Massachusetts, and the University of Vermont in Burlington, Vermont ("Universities"). The Universities generate laboratory wastes (as defined in § 262.102), some of which will be hazardous wastes. As long as the Universities comply with all the requirements of subpart J of this part the Universities' laboratories that are participating in the University Laboratories XL Project as identified in Table 1 of this section, are not subject to the provisions of §§ 262.11, 262.34(c), 40 CFR parts 264 and 265, 267, and the permit requirements of 40 CFR part 270 with respect to said laboratory wastes.

* * * * *

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation requirements of § 262.34, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264, 265 and 267, and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

* * * * *

■ 19. Amend § 262.11 by revising paragraph (d) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

■ 20. Amend § 262.23 by adding paragraph (f) to read as follows:

§ 262.23 Use of the manifest.

* * * * *

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of 40 CFR 264.72(f) or 265.72(f)), the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

■ 21. Amend § 262.34 as follows:

■ a. By revising paragraph (a) introductory text.

■ b. By removing the undesignated sentence after paragraph (a)(1)(iv)(B).

■ c. By revising paragraph (a)(2).

■ d. By revising paragraph (a)(4).

■ e. By adding paragraph (a)(5)

■ f. By revising paragraph (b).

■ g. By revising paragraph (c)(1) introductory text.

■ h. By revising paragraph (c)(2).

■ i. By revising paragraph (d)(4).

■ j. By revising paragraph (f).

■ k. By revising paragraph (i).

The revisions and addition read as follows:

§ 262.34 Accumulation time.

(a) A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

* * * * *

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank;

* * * * *

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with all applicable requirements under 40 CFR part 268.

(5) Generators accumulating hazardous waste on-site for 90 days or less without a permit or without having interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:

* * * * *

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

* * * * *

(d) * * *

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of part 265, with all applicable requirements under 40 CFR part 268; and

* * * * *

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

* * * * *

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

* * * * *

■ 22. Amend § 262.41 by revising paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of 40 CFR parts 270, 264, 265, 266, and 267. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

* * * * *

■ 23. Amend § 262.42 as follows:
■ a. By revising paragraph (a)(1).
■ b. By revising paragraph (a)(2) introductory text.
■ c. By adding paragraph (c).

The revisions and addition read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

* * * * *

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

§ 262.60 [Amended]

■ 24. Amend § 262.60(b) introductory text by removing the citation "§ 262.20(a)" and adding in its place "§ 262.20".

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 25. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

■ 26. Revise § 263.12 to read as follows:

§ 263.12 Transfer facility requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under parts 270, 264, 265, 267, and 268 of this chapter with respect to the storage of those wastes.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 27. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

§ 264.52 [Amended]

■ 28. Amend § 264.52(b) in the first sentence by removing the words ", or part 1510 of chapter V".

§ 264.56 [Amended]

■ 29. Amend paragraph § 264.56(d)(2) introductory text by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)".

■ 30. Amend § 264.72 as follows:
■ a. By revising paragraph (e)(6).
■ b. By revising paragraph (f)(1).
■ c. By revising paragraph (f)(7).
■ d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 264.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been

properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * * * *

§ 264.314 [Amended]

■ 31. In § 264.314, amend paragraph (d) introductory text by revising "(e)(1)" to read "(d)(1)" and by revising "(e)(2)" to read "(d)(2)".

§ 264.316 [Amended]

■ 32. In § 264.316, amend paragraph (b) by removing the citation "§ 264.314(e)" and adding in its place "§ 264.314(d)".

§ 264.552 [Amended]

■ 33. Amend § 264.552 as follows:

■ a. In paragraph (a)(3)(ii), remove the citation "§ 264.314(d)" and add in its place "§ 264.314(c)";

■ b. In paragraph (a)(3)(iii), remove the citation "§ 264.314(f)" and add in its place "§ 264.314(e)";

■ c. In paragraph (a)(3)(iv), remove the citation "§ 264.314(c)" and add in its place "§ 264.314(b)" and remove the citation "§ 264.314(e)" and add in its place "§ 264.314(d)"; and

■ d. In paragraph (e)(4)(iv)(F), remove the citation "260.11(a)(11)" and add in its place "260.11(c)(3)(v)".

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 34. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

§ 265.52 [Amended]

■ 35. Amend paragraph § 265.52(b) in the first sentence by removing the words "or part 1510 of chapter V".

§ 265.56 [Amended]

■ 36. Amend § 265.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)".

■ 37. Amend § 265.72 as follows:

■ a. By revising paragraph (e)(6).

■ b. By revising paragraph (f)(1).

■ c. By revising paragraph (f)(7).

■ d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 265.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * * * *

§ 265.314 [Amended]

■ 38. In § 265.314, amend paragraph (e) introductory text by removing the citation "(f)(1)" and adding in its place "(e)(1)" and by removing the citation "(f)(2)" and adding in its place "(e)(2)".

§ 265.316 [Amended]

■ 39. In § 265.316, amend paragraph (b) by removing the citation "§ 265.314(f)" and adding in its place "§ 265.314(e)".

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 40. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

■ 41. Amend § 266.20 by revising paragraph (b) to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subpart D of part 268 (or applicable prohibition levels in § 268.32 of this chapter or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (*i.e.,* hazardous waste) that they contain, and the recycler complies with § 268.7(b)(6) of this chapter.

* * * * *

■ 42. Revise § 266.22 to read as follows:

§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of subparts A through L of parts 264, 265 and 267, and parts 270 and 124 of this chapter and the notification requirement under section 3010 of RCRA.

■ 43. Amend § 266.70 by revising paragraph (d) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(d) Recyclable materials that are regulated under this subpart that are accumulated speculatively (as defined in § 261.1(c) of this chapter) are subject to all applicable provisions of parts 262 through 265, 267, 270, and 124 of this chapter.

§ 266.80 [Amended]

■ 44. Amend § 266.80 by adding paragraphs (b)(1)(viii) and (b)(2)(viii) to read as follows:

§ 266.80 Applicability and requirements.

* * * * *

(b) * * *

(1) * * *

(viii) All applicable provisions in part 267 of this chapter.

(2) * * *

(viii) All applicable provisions in part 267 of this chapter.

■ 45. Amend § 266.101 by revising paragraph (c) to read as follows:

§ 266.101 Management prior to burning.

* * * * *

(c) *Storage and treatment facilities.* (1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, 267 and 270 of this chapter, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, *etc.*) between the generator and the burner.

(2) Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of § 266.108, hazardous waste that they generate are exempt from the regulations of parts 264, 265, 267 and 270 of this chapter applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of this section.

PART 268—LAND DISPOSAL RESTRICTIONS

■ 46. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 47. In § 268.40(j), the table "Treatment Standards for Hazardous Wastes," is amended as follows:

■ a. By revising the entry for F025.

■ b. By revising the entry for K031.

■ c. By revising the entry for K156.

■ d. By revising the entry for K157.

■ e. By revising the entry for K158.

§ 268.40 Applicability of treatment standards.

* * * * *

(j) * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[**Note:** NA means not applicable]

Waste code	Waste description and treatment/ regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as "mg/L TCLP"; or technology code [4]
*	* *	*	*	*	*
F025 ...	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Light Ends Subcategory.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		1,2-Dichloroethane	107–06–2	0.21	6.0
		1,1-Dichloroethylene	75–35–4	0.025	6.0
		Methylene chloride	75–9–2	0.089	30
		1,1,2-Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Spent Filters/Aids and Desiccants Subcategory.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Hexachlorobenzene	118–74–1	0.055	10
		Hexachlorobutadiene	87–68–3	0.055	5.6
		Hexachloroethane	67–72–1	0.055	30
		Methylene chloride	75–9–2	0.089	30
		1,1,2-Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
*	* *	*	*	*	*
K031 ...	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440–38–2	1.4	5.0 mg/L TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[**Note:** NA means not applicable]

Waste code	Waste description and treatment/ regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as "mg/L TCLP"; or technology code [4]
*	* * *	*	*	*	*
K156 ...	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Acetonitrile	75–05–8	5.6	1.8
		Acetophenone	98–86–2	0.010	9.7
		Aniline	62–53–3	0.81	14
		Benomyl	17804–35–2	0.056	1.4
		Benzene	71–43–2	0.14	10
		Carbaryl	63–25–2	0.006	0.14
		Carbenzadim	10605–21–7	0.056	1.4
		Carbofuran	1563–66–2	0.006	0.14
		Carbosulfan	55285–14–8	0.028	1.4
		Chlorobenzene	108–90–7	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		o-Dichlorobenzene	95–50–1	0.088	6.0
		Methomyl	16752–77–5	0.028	0.14
		Methylene chloride	75–09–2	0.089	30
		Methyl ethyl ketone	78–93–3	0.28	36
		Naphthalene	91–20–3	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyridine	110–86–1	0.014	16
		Toluene	108–88–3	0.080	10
		Triethylamine	121–44–8	0.081	1.5
K157 ...	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Chloromethane	74–87–3	0.19	30
		Methomyl	16752–77–5	0.028	0.14
		Methylene chloride	75–09–2	0.089	30
		Methyl ethyl ketone	78–93–3	0.28	36
		Pyridine	110–86–1	0.014	16
		Triethylamine	121–44–8	0.081	1.5
K158 ...	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Benomyl	17804–35–2	0.056	1.4
		Benzene	71–43–2	0.14	10
		Carbenzadim	10605–21–7	0.056	1.4
		Carbofuran	1563–66–2	0.006	0.14
		Carbosulfan	55285–14–8	0.028	1.4
		Chloroform	67–66–3	0.046	6.0
		Methylene chloride	75–09–2	0.089	30
		Phenol	108–95–2	0.039	6.2
*	* * *	*	*	*	*

* * * * *

Footnotes to Treatment Standard Table 268.40

1. The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/ Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

2. CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

3. Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

4. All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

5. Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

■ 48. In § 268.48(a), the table "Universal Treatment Standards," is amended by adding the specific entries, "bis(2-Ethylhexyl)phthalate" and for "Hexachloropropylene" in alphabetical order:

§ 268.48 Universal Treatment Standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[**Note:** NA means not applicable]

Regulated constituent common name	CAS [1] No.	Wastewater standard concentration [2] in mg/l	Nonwastewater standard concentration [3] in mg/kg unless noted as "mg/l TCLP"
Organic Constituents			
* * * * *		*	*
Ethyl ether	60–29–7	0.12	160
bis(2-Ethylhexyl)phthalate	117–81–7	0.28	28
* * * * *		*	*
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
* * * * *		*	*

* * * * *

Footnotes to Table UTS

1. CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

2. Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

3. Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 49. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

■ 50. Amend § 270.4 as follows:

■ a. By redesignating paragraph (a)(1) as paragraph (a)(1)(i).

■ b. By redesignating paragraph (a)(2) as paragraph (a)(1)(ii).

■ c. By redesignating paragraph (a)(3) as paragraph (a)(1)(iii).

■ d. By redesignating paragraph (a)(4) as paragraph (a)(1)(iv).

■ e. By redesignating paragraph (a) as introductory text (a)(1).

■ f. By adding paragraph (a)(2) to read as follows:

§ 270.4 Effect of a permit.

(a) * * *

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

* * * * *

[FR Doc. 2010–5700 Filed 3–17–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2008–0088]

RIN OST 2105–AD84

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Correction

In rule document 2010–3731 beginning on page 8528 in the issue of Thursday, February 25, 2010, make the following corrections:

§40.225 [Corrected]

1. On page 8529, in §40.225, in the first column, amendatory instructions 2 and 3 are corrected to read as follows:

■ 2. Section 40.225 (a) is amended by removing the words "beginning February 1, 2002".

■ 3. Appendix G is revised to read as follows:

Appendix G to Part 40 [Corrected]

2. On page 8530 and 8531, in Appendix G to Part 40, the graphics are reprinted to read as follows:

U.S. Department of Transportation (DOT)
Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results Here or Affix with Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street
City, Sate, Zip _____

_____

DER Name and Telephone No. _____ (____) _____
DER Name DER Phone Number

D: Reason for Test: ☐ Random ☐ Reasonable Susp ☐ Post-Accident ☐ Return to Duty ☐ Follow-up ☐ Pre-employment

Print Confirmation Results Here or Affix with Tamper Evident Tape

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

_____ _____/____/____
Signature of Employee Date Month Day Year

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: ☐ BAT ☐ STT **DEVICE:** ☐ SALIVA ☐ BREATH* **15-Minute Wait:** ☐ Yes ☐ No

SCREENING TEST: *(For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)*

Test #	Testing Device Name	Device Serial # *OR* Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: *Results MUST be affixed to each copy of this form or printed directly onto the form.*

REMARKS:

Print Additional Results Here or Affix With Tamper Evident Tape

_____ _____
Alcohol Technician's Company Company Street Address

_____ _____ (____) _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) Company City, State, Zip Phone Number

_____ _____/____/____
Signature of Alcohol Technician Date Month Day Year

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

_____ _____/____/____
Signature of Employee Date Month Day Year

Form DOT F 1380 (Rev. 5/2008) **OMB No. 2105-0529**

COPY 1 – ORIGINAL – FORWARD TO THE EMPLOYER

U.S. Department of Transportation (DOT)
Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results Here or Affix with Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street
City, State, Zip _____

_____

DER Name and Telephone No. _____ (____) _____
DER Name **DER Phone Number**

D: Reason for Test: ☐ **Random** ☐ **Reasonable Susp** ☐ **Post-Accident** ☐ **Return to Duty** ☐ **Follow-up** ☐ **Pre-employment**

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

_____ _____/____/____
Signature of Employee **Date Month Day Year**

Print Confirmation Results Here or Affix with Tamper Evident Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: ☐ **BAT** ☐ **STT** **DEVICE:** ☐ **SALIVA** ☐ **BREATH*** **15-Minute Wait:** ☐ **Yes** ☐ **No**

SCREENING TEST: *(For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)*

Test #	Testing Device Name	Device Serial # *OR* Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: *Results MUST be affixed to each copy of this form or printed directly onto the form.*

REMARKS:

Print Additional Results Here or Affix With Tamper Evident Tape

_____ _____
Alcohol Technician's Company **Company Street Address**

_____ _____ (____) _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) **Company City, State, Zip** **Phone Number**

_____ _____/____/_____
Signature of Alcohol Technician **Date Month Day Year**

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

_____ _____/____/____
Signature of Employee **Date Month Day Year**

Form DOT F 1380 (Rev. 5/2008) **OMB No. 2105-0529**

COPY 2 – EMPLOYEE RETAINS

[FR Doc. C1–2010–3731 Filed 3–17–10; 8:45 am]
BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 080229343–0039–03]

RIN 0648–XF87

Endangered and Threatened Wildlife and Plants: Threatened Status for Southern Distinct Population Segment of Eulachon

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

ACTION: Final rule.

SUMMARY: We, the NMFS, issue a final determination to list the southern Distinct Population Segment (DPS) of Pacific eulachon (*Thaleichthys pacificus*; hereafter "eulachon") as a threatened species under the Endangered Species Act (ESA). We intend to consider protective regulations and critical habitat for this DPS in separate rulemaking.

DATES: This final rule is effective on May 17, 2010.

ADDRESSES: NMFS, Protected Resources Division, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Marc Romano at the address above or at (503) 231 2200, or Dwayne Meadows, Office of Protected Resources, Silver Spring, MD (301) 713–1401. The final rule, references and other materials relating to this determination can be found on our website at *www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 1999, we received a petition from Mr. Sam Wright of Olympia, Washington, to list and designate critical habitat for Columbia River populations of eulachon. On November 29, 1999, we determined that while the petition indicated that eulachon catches had recently declined in the Columbia River basin, it did not present substantial scientific information indicating that the petitioned action may be warranted (64 FR 66601). That finding was based on observations that the species is likely more abundant than commercial landings indicate and, based on life history attributes (e.g., the species' high fecundity and short life span) and assumptions from catch data and anecdotal reports, has a demonstrated ability to rebound from periods of low abundance. Additionally, the petition did not provide sufficient information regarding the distinctness of eulachon populations in the Columbia River relative to the other populations in the species' range.

On November 8, 2007, we received a petition from the Cowlitz Indian Tribe requesting that we list the eulachon that spawn south of the U.S. Canada border as threatened or endangered under the ESA. We determined that this petition presented substantial information indicating that the petitioned action may be warranted and requested information to assist with a status review to determine if eulachon warranted listing under the ESA (73 FR 13185, March 12, 2008).

The steps we follow when evaluating whether a species should be listed under the ESA are to: (1) delineate the species under consideration; (2) review the status of the species; (3) consider the ESA section 4(a)(1) factors to identify threats facing the species; (4) assess whether certain protective efforts mitigate these threats; and (5) evaluate and assess the likelihood of the species' future persistence. We provide more detailed information and findings regarding each of these steps later in this notice.

To ensure that this assessment was based on the best available scientific and commercial information, we formed a Biological Review Team (BRT) comprised of Federal scientists from our Northwest, Southwest, and Alaska Fisheries Science Centers, the U.S. Fish and Wildlife Service (FWS), and the U.S. Forest Service. We asked the BRT to first determine whether eulachon warrant delineation into DPSs, using the criteria in the joint NMFS-FWS DPS policy (61 FR 4722, February 7, 1996). We also asked the BRT to assess the level of extinction risk facing the species, describing their confidence that the species is at high risk, moderate risk, or neither. We described a species with high risk as one that is at or near a level of abundance, productivity, and/or spatial structure that places its persistence in question. We described a species at moderate risk as one that exhibits a trajectory indicating that it is more likely than not to be at a high level of extinction risk in the foreseeable future, with the appropriate time horizon depending on the nature of the threats facing the species and the species' life history characteristics. The final report of the BRT deliberations (NMFS, 2010) (hereafter ''status report'') thoroughly describes eulachon biology and natural history, and assesses demographic risks, threats, limiting factors, and overall extinction risk.

On March 13, 2009, we proposed to list the southern DPS of eulachon as a threatened species under the ESA (74 FR 10857), and solicited comments and suggestions from all interested parties including the public, other governmental agencies, the government of Canada, the scientific community, industry, and environmental groups. Specifically, we requested information regarding: (1) eulachon spawning habitat within the range of the southern DPS that was present in the past, but may have been lost over time; (2) biological or other relevant data concerning any threats to the southern DPS of eulachon; (3) the range, distribution, and abundance of the southern DPS of eulachon; (4) current or planned activities within the range of the southern DPS of eulachon and their possible impact on this DPS; (5) recent observations or sampling of eulachon in Northern California rivers, including but not limited to the Klamath River, Mad River, and Redwood Creek; and (6) efforts being made to protect the southern DPS of eulachon. Subsequent to the proposed rule, the BRT produced an updated status report (NMFS, 2010; available on our website at www.nwr.noaa.gov) summarizing new and additional information that has become available since release of the draft status report, responding to substantive peer review and public comments on the draft status report (NMFS, 2008), and presenting the final BRT conclusions on the status of the southern DPS of eulachon.

Summary of Comments Received in Response to the Proposed Rule

We solicited public comment on the proposed listing of southern DPS eulachon for a total of 60 days. We did not receive a request for, nor did we hold, a public hearing on the proposal. Public comments were received from nine commenters, and copies of all public comments received are available online at: *http://www.regulations.gov/search/Regs/home.html#docketDetail?R=NOAA-NMFS–2009–0074*. Summaries of the substantive comments received, and our responses, are provided below, organized by category.

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. Similarly, a joint NMFS/FWS policy requires us to solicit independent expert review from at least

three qualified specialists, concurrent with the public comment period (59 FR 34270, July 1, 1994). In accordance with these policies, we solicited technical review of the draft status report (NMFS, 2008) from five independent experts selected from the academic and scientific community. Each of these reviewers is an expert in either eulachon/forage fish biology or marine fish risk assessment methodology. Comments were received from all five of the independent experts. The reviewers were generally supportive of the scientific principles underlying the DPS determination and proposed listing determination. However, one reviewer did not agree with the delineation of the southern DPS of eulachon and argued that genetic and demographic evidence supports a much finer DPS structure for eulachon in this region. This same reviewer also pointed out a lack of information on eulachon marine distributions off of the U.S. West Coast.

There was substantial overlap between the comments from the independent expert reviewers and the substantive public comments. The comments were sufficiently similar that we have responded to the peer reviewer's comments through our general responses below. The comments received concerning critical habitat are not germane to this listing decision and will not be addressed in this final rule. Those comments will be addressed during any subsequent rulemaking on critical habitat for the southern DPS of eulachon.

Delineation of Distinct Population Segment

Comment 1: One reviewer felt that it was not clear why there were only six DPS scenarios voted on by the BRT in preparing the eulachon status review when more might have been proposed. The same reviewer wondered why NMFS did not consider the option that the Columbia River was a DPS. Furthermore, the reviewer suggested that "the scenario that each river system represents a DPS would have an approximate conceptual model of a river-based or stream-based salmon (*Oncorhynchus*) stock structure as a precedent."

Response: As described in the "Evaluation of Discreteness and Significance for Eulachon" section of the status report, "other possible geographic configurations [of a DPS] that incorporated the petitioned unit were contemplated, but were not seriously considered by the BRT" (NMFS, 2008, p. 26). The BRT did discuss during its deliberations whether the Columbia River was a DPS, and after examining the available data and applying the discreteness and significance criteria for delineation of a DPS, no member of the BRT advocated for including this scenario in the final list that was voted on. The inclusion of a scenario containing multiple DPSs of eulachon in Washington, Oregon, and California allowed BRT members to express support for this scenario, which was representative of a scenario where every river is a DPS (including the Columbia River). However, such a scenario received almost no support.

We agree that, conceptually, it is reasonable to view stock structure of eulachon in a manner similar to that of Pacific salmonids, and our approach to DPS delineation of eulachon is consistent with our approach to DPS delineation for Pacific salmon (referred to as Evolutionary Significant Units (ESUs); 56 FR 58612, November 20, 1991) and steelhead (61 FR 4722, February 7, 1996). We have found that most Pacific salmonid DPSs consist of numerous populations occupying numerous individual drainages spread over a large geographic area. These populations are demographically independent over short time scales, but experience sufficient reproductive exchange over evolutionary timescales that they share a common evolutionary trajectory. In only a few instances (e.g., sockeye salmon) have we identified a Pacific salmonid DPS comprised of a single river basin. Pacific salmonid DPS structure is thus conceptually consistent with the structure of the proposed southern DPS of eulachon, which may be comprised of multiple sub-populations or "stocks."

Comment 2: One reviewer stated that "it is difficult to reconcile the conclusion of the BRT that there is one major DPS with the assertion that the BRT also acknowledges that finer population structure[s] may exist." This reviewer felt that spawn timing and genetic differences (Beacham *et al.*, 2005) represent compelling evidence "that finer structure does exist between the Fraser and Columbia rivers."

Response: The joint DPS policy (61 FR 4722, February 7, 1996) requires that a population segment must be discrete to be considered a DPS, and that the population segment may be considered discrete if it is markedly separated from other populations of the same taxon. There is no requirement that the marked separation be defined at the smallest possible scale, or at any other particular scale. The second criterion of the DPS policy that a population segment must be significant to its taxon often results in the identification of a DPS that is comprised of multiple biological populations, since in many cases a single population would not be considered significant to the taxon. Previously designated DPSs of several marine fishes include a number of identifiable subpopulations with numerous isolated spawning locations and a substantial level of life history, genetic, and ecological diversity (Gustafson *et al.*, 2000; Stout *et al.*, 2001; Gustafson *et al.*, 2006; Carls *et al.*, 2008). Similarly, application of NMFS' ESU policy to Pacific salmon in the contiguous United States has resulted in designation of 37 salmon ESUs and 15 steelhead DPSs, each of which is commonly comprised of numerous populations that are often genetically and demographically differentiated one from another. The FWS also frequently identifies DPSs of fish species that are comprised of multiple biological populations (e.g., bulltrout; 64 FR 58909, November 1, 1999).

Moreover, neither the available genetic nor the demographic data provide evidence that eulachon in the Fraser and Columbia rivers are "markedly separated," as required by the DPS policy. With regard to the genetic microsatellite DNA study of Beacham *et al.*, (2005), the BRT was concerned that this study compared samples between the Fraser and Columbia rivers taken in a single year, and thus the temporal stability of the genetic variation observed between these two rivers could not be adequately assessed. The BRT concerns with regard to temporal stability derive from the realization that reported year-to-year genetic variation within three British Columbia coastal river systems (Nass, Kemano, and Bella Coola rivers) in this study was as great as variation among the rivers (Beacham *et al.*, 2005). This temporal genetic variation indicates that additional research is needed to identify appropriate sampling and data collection strategies to fully characterize genetic relationships among eulachon populations.

Comment 3: Two commenters questioned the northern boundary of the DPS. One commenter stated that the northern boundary of the DPS in British Columbia is ". . . debatable and not well supported by data and information . . . [due to] . . . the lack of sufficient genetic data and limited understanding of how freshwater and marine environments affect eulachon population structure . . . ." The other commenter stated that the selection of the Nass River as the point of demarcation for the northern boundary of the southern DPS reveals a "results-oriented" outcome because the Nass River and points north generate very substantial returns of eulachon.

Response: The proposed rule outlined the numerous factors that support designation of a DPS for eulachon south of the Nass River/Dixon Entrance on the basis of "marked separation" in both ecological and physiological features from eulachon to the north. This decision is based on the best scientific and commercial data available that indicate eulachon occurring in this area are discrete from eulachon occurring north of this area because of differences in spawning temperatures; length- and weight-at-maturity; ecological features of both the oceanic and freshwater environments occupied by eulachon; and genetic characteristics.

The recent decline in eulachon escapements to rivers on the West Coast of North America are not confined to areas south of the Nass River. Although not part of the subject DPS, Returning eulachon in Southeast Alaska "have had marked declines in recent years" and "since 2004 there have been minimal returns [of eulachon] in the Burroughs Bay and Behm Canal area" of Southeast Alaska (ADFG, 2009). Commercial and subsistence eulachon fishing was closed in 2009 in Bradfield Canal and in the waters of Burroughs Bay, and the Unuk, Klahini, and Chickamin rivers (ADFG, 2009). Therefore the northern boundary of the DPS does not coincide with areas where declines in eulachon abundance have been observed.

Comment 4: One commenter suggested that the southern boundary of the DPS should be considered unknown given the absence of genetic data for populations south of the Columbia River. In addition, one reviewer stated that the possibility exists that the Klamath River population (and associated populations to the south) is distinct.

Response: Although we have no genetic data for populations of eulachon south of the Columbia River, the weight of evidence suggests that eulachon spawned in large numbers in the Mad River in California as recently as the 1960s and 1970s. While there are records of eulachon in California south of the Mad River, all of these records consist of either a single specimen, or a small group of fish (Jennings, 1996; Vincik and Titus, 2007). It is unlikely that any river south of the Mad River supports a self-sustaining population of eulachon, and most authors consider the Mad River the southern limit of spawning for the species (Miller and Lea, 1972; Moyle *et al.*, 1995; Sweetnam *et al.*, 2001; Moyle, 2002; Allen *et al.*, 2006). Since we have no evidence that large numbers of eulachon spawned south of the Mad River in the recent past, we view the Mad River as the most likely southern boundary of the currently constituted DPS.

As stated above in our response to Comment 2, the joint DPS policy (61 FR 4722, February 7, 1996) requires that a population segment must be discrete to be considered a DPS, and that the population segment may be considered discrete if it is markedly separated from other populations of the same taxon. The preponderance of available physical, physiological, ecological and behavioral data indicate that eulachon of the Klamath River are not markedly separated from other eulachon within the range of the southern DPS.

Appropriateness of the Scope of the Proposed Rule and Assessment

Comment 5: One reviewer commented that "the thoroughness of the [draft status report] literature review is impressive and all facets of life history, historical use, habitat, commercial fisheries and traditional uses are described." However, this reviewer questioned whether the BRT examined all available databases relevant to marine distribution of eulachon in waters offshore of Washington, Oregon, and California.

Response: Although known marine distribution and abundance of eulachon was thoroughly discussed during the BRT's deliberations, we agree that the draft status report (NMFS, 2008) failed to present or summarize all available information on marine distribution of eulachon off the U.S. West Coast. The BRT considered this additional information and included it in its final report (NMFS, 2010).

Status of the Southern DPS of Eulachon

Comment 6: One reviewer questioned the conclusion that the DPS is at moderate, rather than high, risk of extinction, and one commenter stated that the best available data should have led to an endangered status under the ESA.

Response: The proposed rule described our concerns about the abundance and spatial structure of this DPS, but also described the factors that mitigate that risk and support a conclusion that the DPS is not presently in danger of extinction: (1) two core spawning areas have sufficient numbers of eulachon to support spawning, at least at low levels; (2) as observed in the recent past (2001–2003), a reversion to favorable ocean conditions could result in a rebound in abundance; and (3) the species likely strays at a moderate-to-high rate, so that depressed populations could rebuild in the presence of favorable environmental conditions.

Comment 7: While agreeing with the "conclusion that the southern DPS of eulachon, as defined in the [status] report, is at moderate risk of extinction throughout its range," one reviewer stated the evidence also "suggests that eulachon are on the verge of extinction" in California.

Response: We have serious concerns about the long-term viability of eulachon in California. None of the three historical California spawning areas (Mad River, Redwood Creek, and Klamath River) have produced a documented, significant run of eulachon in many years. The ESA defines endangered and threatened species in terms of the level of extinction risk ''throughout all or a significant portion of its range'' (sections 3(6) and 3(20)). If it is determined that the defined species is not in danger of extinction throughout all of its range, but there are major geographic areas where the species is no longer viable, the statute directs that we must address whether such areas represent a significant portion of the species' range. Waples *et al.*, (2007) proposed a biological framework for evaluating whether a given portion of a species' range is significant. The authors propose that an area constitutes a significant portion of the species' range if extirpation in that area "would substantially influence extinction risk of the entire species" (Waples *et al.*, 2007). (The test proposed by Waples *et al.*, (2007) only applies to the determination of whether an area is significant, and thus is distinct from the test that was rejected by the Court of Appeals for the Ninth Circuit in *Defenders of Wildlife* v. *Norton*, 258 F.3d 1136 (9th Cir. 2001) (Waples *et al.*, 2007).)

We applied the test recommended in Waples *et al.*, (2007) to our review of the southern eulachon DPS. The overwhelming majority of production for the southern DPS of eulachon occurs in three subpopulations within the DPS; the Columbia River, the Fraser River and the British Columbia coastal rivers (NMFS, 2008). In addition, the majority of known spawning areas, and the most consistent spawning runs, within the southern DPS occur outside of California. While the California subpopulation of eulachon is important to the species biologically, if extirpation of the subpopulation occurred it would not substantially influence the extinction risk of the entire DPS.

Eulachon Spawning Habitat within the Range of the Southern DPS

Comment 8: Two commenters expressed concern that the draft status report (NMFS, 2008) and proposed rule do not address eulachon populations in

Puget Sound rivers, in the Nooksack River, and on the coast of Oregon and Washington.

Response: The above mentioned areas are not known to support established populations of eulachon, although occasional occurrence of eulachon presence has been recorded (see WDFW and ODFW, 2008). NMFS found no record of eulachon spawning stocks occurring in rivers draining into Puget Sound, and information on eulachon spatial distribution submitted to us by the Washington Department of Fish and Wildlife (WDFW) provides no evidence of eulachon spawning in Puget Sound, now or in the past.

Claims that eulachon occur in the Nooksack River are likely the result of misidentification with longfin smelt (*Spirinchus thaleichthys*). The run of "hooligans" into the Nooksack commonly occurs in November, which is outside of the normal spawn-timing period for eulachon, and these fish have recently been positively identified as longfin smelt (Greg Bargmann, WDFW, pers. comm.). Unfortunately, mention of the Nooksack River as a eulachon river continues to occur in much of the recent literature (see WDFW and ODFW, 2001; Wydoski and Whitney, 2003; Willson *et al.*, 2006; Moody, 2008).

Eulachon are periodically noted in small numbers in several rivers and creeks on the Washington and Oregon coasts. With regard to coastal rivers of Washington State, occasional or rare occurrences of eulachon were noted in the status report (NMFS, 2008). In addition, the Oregon Department of Fish and Wildlife (ODFW) commented that "[t]he Sandy River [within the Columbia River Basin] in Oregon is the only Oregon tributary known to support a run of eulachon" (ODFW 2009). Documentation of these irregular occurrences of eulachon is usually anecdotal and it is uncertain how these fish are related demographically to eulachon in rivers such as the Fraser and Columbia, where consistent annual runs occur. In addition, eulachon identification can be difficult, and they are easily confused with other smelt species, which has led to misidentification in the past. Occasionally large runs are noticed, usually by the abundance of predatory birds and marine mammals that accompany these runs, in coastal rivers such as the Queets and Quinault. Usually these large run events are separated in time by periods greater than the generation time of eulachon. We do not know enough about the biology of eulachon to know if these eulachon run events represent self-sustaining populations or are simply stray individuals from larger eulachon systems. It is possible that these populations may exist at levels of abundance that would not be detected by the casual observer, only to become noticed in years of high abundance.

Biological or Other Relevant Data Concerning any Threats to the Southern DPS of Eulachon

Comment 9: One commenter remarked that bycatch reduction devices (BRDs) have been required in Washington's ocean shrimp fishery since 1999 and that they have substantially reduced the number of eulachon taken in shrimp trawls. Another commenter stated that bycatch is not a moderate threat to eulachon and that shrimp fishery bycatch is at most a minor threat to eulachon. The commenter pointed out that the timing of the declines in the Columbia River and Fraser River eulachon populations (as evidenced by declines in commercial landings of eulachon) does not correlate in a reasonable way with effort in the Oregon shrimp trawl fishery (as would be expected if fishery bycatch were a significant factor).

Response: We do not contend that bycatch in the ocean shrimp trawl fishery was the sole cause of the decline in Fraser River and Columbia River eulachon stocks, and thus would not have expected to see a cause and effect relationship between historical effort in the Oregon shrimp fishery and decline in eulachon landings in these subpopulations. Trends in historical commercial eulachon landings do not provide a quantitative measure of trends in spawning stock abundance, since harvest can reflect market and environmental conditions as well as population abundance. In addition, a large component of the Columbia River eulachon subpopulation resides as juveniles off the west coast of Vancouver Island (Beacham *et al.*, 2005, DFO 2009b). As a result, the Oregon shrimp trawl fishery is likely to encounter only a portion of the Columbia River eulachon subpopulation. Since commercial landings only provide a relative measure of run strength and the Oregon shrimp trawl fishery is only likely to encounter a portion of the Columbia River eulachon population, it is unlikely that there would be a linkage between historical effort in the Oregon shrimp fishery and historical decline in Columbia River commercial landings.

We recognize that mandated use of BRDs in offshore shrimp trawl fisheries has substantially reduced bycatch (Hannah and Jones, 2007). However, based on unpublished eulachon bycatch data in Oregon and California from the Northwest Fisheries Science Center (NWFSC) West Coast Groundfish Observer Program, we have concerns about the level of eulachon bycatch (and delayed mortality of eulachon escaping trawl gear) in ocean shrimp (*Pandalus jordani*, also known as smooth pink shrimp) fisheries off the U. S. West Coast and in shrimp trawl fisheries in British Columbia, which mainly target ocean shrimp and northern shrimp (*P. borealis eous*) (Hay *et al.*, 1999a, 1999b; Olsen *et al.*, 2000; Hannah and Jones, 2007; NWFSC, 2008; DFO, 2009a). While the bycatch in the ocean shrimp trawl fishery may not be a primary cause of the decline in Fraser River and Columbia River eulachon stocks, we cannot rule out the possibility that it could be a factor limiting their recovery. We also recognize that climate change impact on ocean conditions is likely the most serious threat to persistence of eulachon in all four sub-areas of the DPS: Klamath River, Columbia River, Fraser River, and British Columbia coastal rivers south of the Nass River.

Comment 10: One commenter stated that there is conflicting information on the survival of fishes that pass through BRDs. Another commenter stated that NMFS overlooked the most appropriate study on survival from BRD escapement (Soldal and Engas, 1997) and misinterpreted the results of Suuronen *et al.*, (1996a; 1996b) in applying them to BRDs in the ocean shrimp trawl fishery.

Response: We agree that there is conflicting information on the survival of fishes that pass through BRDs. We also agree that the studies of Suuronen *et al.* (1996a; 1996b), which examined survival of herring escaping trawl nets after passing through either rigid sorting grids or through the codend mesh, are not applicable to the probable effects of BRDs in the ocean shrimp fishery off the U.S. West Coast, and should not have been cited as such in the proposed rule (74 FR 10857, March 13, 2009).

It is difficult to evaluate the true effectiveness of BRDs in a fishery without knowing the survival rate of fish that are deflected by the BRD and escape the trawl net (Broadhurst 2000; Suuronen 2005; Broadhurst *et al.*, 2006). We know of no studies that have been designed to assess survival of small pelagic fish after they are deflected from the codend of a trawl net by a rigid grate BRD and exit a trawl net. Given that the Soldal and Engas (1997) study was designed to assess survival of young gadoid fishes excluded from a shrimp trawl by a rigid deflecting grid, and the authors state that the survival data on capelin (*Mallotus villosus*) and herring

(*Clupea harengus*) in this study "should therefore not be relied on," this study does not appear to be the most appropriate study on survival from BRD escapement with regard to eulachon, since eulachon would most likely respond in a similar manner as capelin did in this study.

Although data on survivability of BRDs by small pelagic fishes such as eulachon are scarce, many studies on other fishes indicate that "among some species groups, such as small-sized pelagic fish, mortality may be high" and "the smallest escapees often appear the most vulnerable" (Suuronen, 2005). Results of several studies have shown a direct relationship between length and survival of fish escaping trawl nets, either with or without deflecting grids (Sangster *et al.*, 1996; Suuronen *et al.*, 1996a; Ingolfsson *et al.*, 2007), indicating that smaller fish with their poorer swimming ability and endurance may be more likely to suffer greater injury and stress during their escape from trawl gear than larger fish (Broadhurst *et al.*, 2006; Ingolfsson *et al.*, 2007).

Comment 11: One commenter questioned why bycatch of eulachon in shrimp fisheries is regarded as a high threat to Columbia River and British Columbia coastal populations, yet only a moderate threat to the Fraser River population. The same commenter stated that NMFS did not provide any data on bycatch of eulachon stocks off the U.S. West Coast, or any data from any U.S. coastal shrimp fisheries.

Response: Neither the draft status report (NMFS, 2008) nor proposed rule indicate a difference in the degree of threat described by the commenter. During its deliberations, the BRT examined unpublished data collected by NMFS' West Coast Groundfish Observer Program on eulachon and other smelt bycatch in Oregon and California offshore ocean shrimp fisheries. Some of these data are now published (NWFSC, 2008). The draft status report (NMFS, 2008, p. 59) stated that "eulachon by-catch in offshore shrimp fisheries were also ranked in the top four threats in all sub-areas of the DPS," and presented the results of its qualitative ranking of threats in Tables 10 13 in that document (NMFS, 2008, p. 107 110). From the threat scores in that table it is apparent that the BRT considered eulachon bycatch as essentially an equal threat in each of these subpopulations of the DPS. In addition, the proposed rule (74 FR 10872, March 13, 2009) stated that "[t]he BRT identified bycatch of eulachon in commercial fisheries as a moderate threat to all four populations."

Comment 12: One commenter stated that the recent range expansion of Humboldt squid (*Dosidicus gigas*, also known as jumbo squid) into the northeast Pacific Ocean is likely influencing eulachon abundance.

Response: We agree that the recent and ongoing expansion of large numbers of jumbo squid into waters off Oregon, Washington, and British Columbia is likely to have a significant impact on eulachon, but the extent of the impacts is uncertain, and cannot be determined to be a cause for the eulachon population's decline. An analysis of the contents of jumbo squid stomachs collected in the Northern California Current, including 40 collected off Oregon and Washington, failed to record the presence of eulachon or other osmerid smelts in the jumbo squid diet (Field *et al.*, 2007). The absence of eulachon in the diet of jumbo squid analyzed by Field *et al.*, (2007) may be due to a combination of low eulachon abundance in the study area and a lack of significant overlap in the two species' depth range; eulachon are commonly found between 20 and 150 m (66 and 492 ft) deep (Hay and McCarter, 2000) while jumbo squid in the Field *et al.*, (2007) study were mostly collected below this depth. Rapid digestion of small pelagic fish such as eulachon may also limit the ability to detect them in jumbo squid stomachs.

The Range, Distribution, and Abundance of the Southern DPS of Eulachon

Comment 13: One commenter stated that NMFS mischaracterized the work of Sadovy (2001) in a manner that overstates the extinction risk for the southern DPS of eulachon. The commenter stated that NMFS argues that short lived, small-bodied, high-fecundity, high-mortality forage species are not resilient to large swings in population size and mortality rates.

Response: We are unable to determine how our analysis in the draft status report (NMFS, 2008) or the proposed rule (74 FR 10857, March 13, 2009) could be interpreted as suggesting that the Sadovy (2001) paper or any other part of these documents argues that short lived, small-bodied, high-fecundity, high-mortality forage species are not resilient to large swings in population size and mortality rates. To the contrary, the draft status report (NMFS, 2008) stated the opposite with regard to resiliency of the species.

Our original purpose in citing Sadovy (2001) was not in regard to population resiliency of forage fish species, but in regard to Sadovy's (2001) concept that a critical density of spawning individuals must be present for fertilization to be successful and thus buffer against an Allee effect (i.e., a decrease in fitness when population density is low).

Comment 14: Two commenters felt that NMFS did not adequately address all of the historical information available regarding run size fluctuations of eulachon, particularly references that point to a severe downturn in eulachon abundance between approximately 1835 and 1867 in the Cowlitz River and the Columbia River Basin.

Response: Although we did not cite every available primary historical reference source (e.g., accounts of early explorers, surveyors, fur trappers, settlers, and naturalists) that described a decline in eulachon numbers on the Columbia and Cowlitz rivers during the 1830s to 1860s, we did cite in the draft status report (NMFS, 2008) the main secondary references in which this information is available. In addition, the BRT judged these reports to be credible scientific information appropriate for inclusion in its deliberations. Based on the available information, the BRT concluded that this information was likely to be accurate and indicative of a true decline in eulachon returns and subsequent recovery during that time period.

Comment 15: Two commenters noted that NMFS ignored important ethnographic information found in a narrative collected by Franz Boas (1894) in which a myth regarding eulachon was recounted by a member of the Chinook Tribe.

Response: "The Gila'unalx" in the ethnographic source, Boas (1894), is a tale of a Gila'unalx boy, whose guardian spirit is Iqamia'itx (helper of fishermen) that helps him catch smelt. This tale, translated from a tale told to Franz Boas by Charles Cultee (one of the last members of the Chinook tribe) in 1890 1891, cannot be interpreted as describing an absence of smelt from the Columbia River Basin, but does indicate that smelt fluctuated in abundance in different tributaries or areas of the Columbia River from year to year, and that Native American tribal members had to travel in some years to other areas of the basin to catch smelt. Similar fluctuations in smelt returns to individual Columbia River tributaries commonly occur today.

Comment 16: Two commenters stated that eulachon run size fluctuations should have been compared to that of other forage fish, such as herring, sardines, and anchovies, which have all experienced large swings in abundance.

Response: We recognize the long-term variability and cyclic nature of forage fish population abundance and

examined the relevance of the Pacific sardine model as it applies to eulachon. During times of low abundance both anchovies and sardines contract their range to core refuge areas where they remain common (Lluch-Belda *et al.*, 1992). We were unable to identify a similar geographical refuge or population reservoir within the range of the southern DPS of eulachon, and conclude that the sardine/anchovy model cannot be used as a proxy for how eulachon populations will respond to changing ocean conditions or climate change. We noted that other species of smelt in the Northern California Current are undergoing similar long-term declining trends in abundance, that this region is on the southern end of the range for smelts, and that ocean warming may have a detrimental impact on these essentially cold-water species. In contrast to anadromous eulachon, purely marine forage fish such as anchovies, sardines, and Pacific hake (*Merluccius productus*) can shift their distribution and geographical center of spawning in response to environmental changes (Lluch-Belda *et al.*, 1992; Ware and McFarlane, 1995; Benson *et al.*, 2002; Rodriguez-Sanchez *et al.*, 2002). By contrast, eulachon show fidelity to particular spawning rivers and adult and larval/juvenile eulachon must respond to local changes in spawning and nearshore-rearing conditions, respectively.

Comment 17: Since we know that eulachon populations have declined in the past, and then reversed substantially for a significant period of time, one commenter questioned NMFS' proposal to list if the present period of population decline is no different from the past.

Response: We acknowledge that past population decline and subsequent recovery of eulachon in the Cowlitz and Columbia rivers is documented through multiple anecdotal sources. However, the present period of population decline is very different from past events in that every subpopulation of the DPS is affected simultaneously, and the decline is not confined to the Columbia River subpopulation. Ethnographic and historical references indicate that subpopulations of the southern DPS of eulachon north of Washington State remained healthy during the period of population decline in the Columbia River in the 1830s to 1860s.

In addition, available information (e.g., disjunct spawning distribution, differences in spawn timing, genetics, life history diversity) suggests that population structure of eulachon roughly conforms to the classical concept of a metapopulation, in which local subpopulations are linked demographically by at least episodic migration, and extinction and recolonization of local subpopulations are common over ecological time frames. In this type of system, at any given point in time, some local subpopulations are expected to be increasing and some declining, and some suitable habitat patches are expected to be uninhabited. We considered whether eulachon subpopulation declines are more pervasive and more pronounced than we would expect to find in a healthy metapopulation. Currently, no subpopulation of the southern DPS of eulachon is abundant (as determined by spawning stock abundance, analysis of fishery catch, or traditional knowledge) or at levels that would be classified as normal or average over the historical time series. Eulachon are in long-term decline throughout the DPS (NMFS, 2010), and current subpopulation trajectories, with the exception of the Columbia River, are well below and out of the range of known historic patterns.

Comment 18: One commenter stated that NMFS' characterization of the spawning populations in the Columbia and Fraser rivers appearing to be at "historically low levels" is subject to dispute.

Response: We acknowledge that, based on the historical record, this characterization should be modified, and that eulachon spawning populations have declined to what appear to be historically low levels in the Fraser River and nearly so in the Columbia River.

Comment 19: One commenter stated that eulachon " disappeared completely for years at a time, for approximately three decades, in the 1800s" and that eulachon suffered what was termed a "three-decade absence," a "three-decade disappearance," or a "30–year disappearance" from the Columbia River with a subsequent return to abundance.

Response: Although numerous references indicate that eulachon suffered a severe decline in abundance in the Columbia River during the 1830s 1860s, the record does not support the contention that eulachon "disappeared" completely from the Columbia River during this entire time. A memoir written by Peter W. Crawford (Crawford, 1878) indicates that, prior to 1865 when Crawford records the appearance of a large run of eulachon on the Cowlitz River, "The early settlers on the Lower Cowlitz remember having a few such little fellows in small numbers."

Comment 20: One commenter stated that our decision to deny the 1999 petition to list eulachon in the Columbia River under the ESA (64 FR 66601, November 29, 1999) was correct, and that we have not adequately justified our decision to now list the species as threatened.

Response: We found that after reviewing the 1999 petition to list eulachon (Wright, 1999), as well as information readily available to NMFS scientists, the petition did not present substantial scientific information indicating that eulachon in the Columbia River were a DPS (64 FR 66601, November 29, 1999). We still agree that eulachon in the Columbia River are not a DPS and have proposed that the Columbia River subpopulation of eulachon is part of the much larger southern DPS of eulachon that extends from the Skeena River in British Columbia to the Mad River in California. We believe, for the reasons outlined in this determination, that the southern DPS is at risk of becoming endangered in the foreseeable future and thus should be listed as a threatened species under the ESA.

Comment 21: One commenter stated that NMFS should provide numbers and the basis for minimum viable population (MVP) sizes of eulachon. While NMFS listed the Klamath River, Fraser River, Bella Coola River, and Rivers Inlet, as areas where eulachon are below what would be considered minimum viable population sizes, the commenter questioned why the Columbia River is left off this list.

Response: We stated in the proposed rule (74 FR 10869, March 13, 2009) that MVP sizes for a forage fish species like eulachon "may be on the order of 50,000 to 500,000" (see Dulvy *et al.*, 2004). We conclude that high eulachon population sizes are necessary for viability because: (1) there is a critical threshold density of adult eulachon that must be present for successful reproduction; (2) there must be enough offspring to counteract high in-river egg and larval mortality and larval mortality in the ocean; and (3) there must be enough offspring to buffer against variation in local environmental conditions.

In recent years, estimated eulachon spawner abundance in the Klamath River, Bella Coola River, and Rivers Inlet have all been fewer than 50,000 individual fish and the Fraser River has averaged fewer than 500,000 fish. Thus there is concern that these rivers are below what could be considered the minimum number necessary for viability. Columbia River eulachon were not included in this list as their estimated abundance is likely above this minimum necessary for viability (i.e., > 500,000 individual eulachon).

Comment 22: One commenter stated that the Columbia River MVP threshold should be set at the upper limit of the best available estimate of approximately 700,000 fish.

Response: We agree with the commenter that large systems like the Columbia River will likely require an MVP that is set at the upper limit of the best available estimate. The MVP sizes suggested by Dulvy *et al.*, (2004) are largely theoretical and insufficient information currently exists to set an absolute MVP level for the Columbia River with any confidence. We acknowledge that part of any future Recovery Plan developed for the southern DPS of eulachon should include objective, measurable criteria will have to be established to determine when the DPS should be removed from the ESA.

Comment 23: One commenter was concerned that in most samples of spawning eulachon, males greatly outnumber females, yet NMFS provided no evidence or even speculation to indicate if this is an evolved characteristic or if it is caused by fishery selectivity (directed or bycatch) and/or changing environmental conditions.

Response: Whether male eulachon actually outnumber females in most rivers is a subject of controversy, and some researchers view skewed sex ratios to be an artifact of sampling (Hay and McCarter 2000). Sex ratios can vary with fishing gear type, distance upriver, distance from the river shoreline, time of day, and migration time (McHugh, 1939; Langer *et al.*, 1977; Moffit *et al.*, 2002; Lewis *et al.*, 2002; Spangler 2002; Spangler *et al.*, 2003). Eulachon sex ratios derived from commercial fishery samples may also be biased in favor of the more marketable, firmer-bodied males (Smith and Saalfeld, 1955). Nevertheless, the rangewide observations of higher male to female ratios suggest that there may be a selective advantage to having more males present than females during spawning.

Determination of Species under the ESA

The ESA defines species to include subspecies or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). The FWS and NMFS have adopted a joint policy describing what constitutes a DPS of a taxonomic species (61 FR 4722, February 7, 1996). The joint DPS policy identifies two criteria for making DPS determinations: (1) the population must be discrete in relation to the remainder of the taxon (species or subspecies) to which it belongs; and (2) the population must be significant to the remainder of the taxon to which it belongs.

Additionally, under the joint policy a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) "[i]t is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation"; or (2) "[i]t is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D)" of the ESA (61 FR 4725).

If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) "[p]ersistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) [e]vidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) [e]vidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) [e]vidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics." (61 FR 4725).

The ESA defines an endangered species as one that "is in danger of extinction throughout all or a significant portion of its range," and a threatened species as one that "is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range" (Section 3 (6) and (20) of the ESA). Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence. We are to make this determination based solely on the best available scientific and commercial information after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species.

Summary of Factors Affecting the Southern Distinct Population Segment of Eulachon

The primary factors responsible for the decline of the southern DPS of eulachon are the destruction, modification, or curtailment of habitat and inadequacy of existing regulatory mechanisms. The following discussion briefly summarizes our findings regarding threats to the southern DPS of eulachon. More details and supporting evidence can be found in the proposed listing rule (74 FR 10857, March 13, 2009) and the status report (NMFS, 2010). For analytical purposes, we identified and ranked threats for the four primary populations of this DPS: mainland British Columbia rivers south of the Nass River, Fraser River, Columbia River, and Klamath River.

The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

We have identified changes in ocean conditions due to climate change as the most significant threat to eulachon and their habitats. We also believe that climate-induced change to freshwater habitats is a moderate threat to eulachon throughout the range of the southern DPS. There is evidence that climate change is leading to relatively rapid changes in both marine and freshwater environmental conditions that could impact eulachon. Marine, estuarine, and freshwater habitat in the Pacific Northwest has been influenced by climate change over the past 50–100 years and global patterns suggest the long-term trend is for a warmer, less productive ocean regime in the California Current and the Transitional Pacific. Climate-driven changes in stream flow timing and intensity in this area have also occurred and are likely to continue (Morrison *et al.*, 2002; Pickard and Marmorek, 2007; DFO, 2008). The recent decline in abundance or relative abundance of eulachon in many systems, coupled with the probable disruption of metapopulation structure, may make it more difficult for eulachon to adapt to changing environmental conditions.

Analyses of temperature trends for the U.S. part of the Pacific Northwest (Mote *et al.*, 1999); the maritime portions of Oregon, Washington, and British Columbia (Mote, 2003a); and the Puget Sound-Georgia Basin region (Mote, 2003b) have shown that air temperature

increases in these respective regions during the twentieth century were substantially greater than the global average (Mote, 2003b). This change in surface temperature has already modified, and is likely to continue to modify, freshwater and estuarine habitats of eulachon. These higher temperatures have led to declines in snowpack, more precipitation falling as rain rather than snow, and increased melting of glaciers, all of which affects stream flow timing and peak river flows. Since the majority of eulachon rivers are fed by extensive snowmelt or glacial runoff, elevated temperatures, changes in snow pack, and changes in the timing and intensity of stream flows will likely have impacts on eulachon. In most rivers, eulachon typically spawn well before the spring freshet, near the seasonal flow minimum, and this strategy typically results in egg hatch coinciding with peak spring river discharge. The expected alteration in stream flow timing may cause eulachon to spawn earlier or be flushed out of spawning rivers at an earlier date. Early emigration, together with the anticipated delay in the onset of coastal upwelling (see below), may result in a mismatch between entry of juvenile eulachon into the ocean and coastal upwelling, which could have a negative impact on marine survival of eulachon during this critical transition period.

Eulachon are basically a cold-water species and are adapted to feed on a northern assemblage of copepods in the ocean during the critical transition period from larvae to juvenile (and much of their recent recruitment failure may be traced to mortality during this critical period). However, there have been recent shifts in the suite of copepod species available to eulachon (Mackas *et al*, 2001; Hooff and Peterson, 2006; Mackas *et al.*, 2007), and we are concerned that climate change may be contributing to a mismatch between eulachon life history and prey species. Increases in ocean temperatures off the coast of the Pacific Northwest could alter the abundance and composition of copepod communities, thus reducing the amount of food available for eulachon, particularly larval eulachon. Zamon and Welch (2005) reported these types of rapid shifts in zooplankton communities in the Northeast Pacific during recent El Nino-La Nina events. Warming ocean conditions may also lead to a general reduction in eulachon forage. For instance, Roemmich and McGowan (1995) noted an 80 percent reduction of macrozooplankton biomass off Southern California between 1951 and 1993. Eulachon survival during the critical transition period between larval and juvenile stages is likely linked to initial intensity and timing of upwelling in the Northern California Current Province. However, predictions under warming conditions indicate that peak upwelling could shift as much as one month later than normal, which would result in eulachon larvae entering the ocean at a time when preferred prey organisms are not as abundant due to a delay in upwelling. These conditions would likely have significant negative impacts on marine survival rates of eulachon.

Warming ocean conditions have allowed both Pacific hake (Phillips *et al.*, 2007) and Pacific sardine (*Sardinops sagax*) (Emmett *et al.*, 2005) to expand their distributions to the north. In contrast to anadromous eulachon, purely marine forage fish such as Pacific sardine and Pacific hake can shift their distribution and geographical center of spawning in response to environmental changes (Lluch-Belda *et al.*, 1992; Ware and McFarlane, 1995; Benson *et al.*, 2002; Rodriguez-Sanchez *et al.*, 2002). The result of these distribution shifts is increased predation on eulachon by Pacific hake and competition for food resources by both species.

The BRT identified dams and water diversions as moderate threats to eulachon in the Columbia and Klamath rivers where hydropower generation and flood control are major activities, and a low to moderate risk for eulachon in the Fraser and mainland British Columbia rivers where dams are fewer. Dams can slow or block eulachon migration. Water storage and flood control dams and water divisions often alter the natural hydrograph of river systems during the winter and spring months. Dams can also impede or alter bedload movement, changing the composition of river substrates important to spawning eulachon. Degraded water quality is common in some areas occupied by southern DPS eulachon. In the Columbia and Klamath systems, large-scale impoundment of water has increased winter water temperatures, potentially altering the water temperature during eulachon spawning periods (NMFS, 2010). Numerous chemical contaminants are also present in spawning rivers, but the exact effect these compounds may have on spawning and egg development is unknown (NMFS, 2010).

The BRT identified dredging as a low to moderate threat to eulachon in the Fraser and Columbia rivers and a low threat for eulachon in mainland British Columbia rivers due to less dredging activity here. Dredging during eulachon spawning would be particularly detrimental, as eggs associated with benthic substrates are likely to be destroyed.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Commercial harvest of eulachon in the Columbia and Fraser rivers represents a low to moderate threat. Current harvest levels are orders of magnitude lower than historic harvest levels, and a relatively small number of vessels operate in this fishery. However, it is possible that even a small harvest of the remaining stock may slow recovery. No significant commercial fishing for eulachon occurs in the Klamath River or in British Columbia rivers north of the Fraser River. The BRT ranked harvest by recreational and Tribal/First Nations fishers as a very low to low threat to eulachon in all four DPS populations. As described below, it is likely that these harvests have a negligible effect on eulachon abundance.

Commercial Fisheries

In Oregon, commercial fishing for eulachon is allowed in the Pacific Ocean, Columbia River, Sandy River, and Umpqua River. In the Pacific Ocean, eulachon can be harvested year-round using any method otherwise authorized to harvest food fish in the open ocean. In the Sandy River, commercial fishing with dip nets is allowed in a small portion of the lower river, year-round, 7 days a week, 24 hours a day. The last large commercial harvest of eulachon in the Sandy River occurred in 1985 (304,500 lbs. (138 metric tons)), with a moderate harvest occurring in 2003 (23,000 lbs. (10 metric tons)) (John North, ODFW, pers. comm.). In the Umpqua River, commercial fishing for eulachon is allowed year-round and 24 hours a day with dip nets and gill nets not more than 600 ft (183 m) in length and of a mesh size no larger than 2 inches (51 mm). Those areas of the Umpqua River not closed to commercial fishing for American shad (*Alosa sapidissima*) (upstream from approximately river mile 21 (34 km)) are open to commercial fishing for eulachon. However, commercial fishing for eulachon has not occurred for many years in the Umpqua River (John North, ODFW, pers. comm.). In the mainstem Columbia River, permissible commercial gear includes: gill nets with a mesh size no larger than 2 inches (51 mm); dip nets having a bag frame no larger than 36 inches (91 cm) in diameter; and small trawl nets (Oregon Administrative Rule 635 004 0075). Commercial fishing in the

Columbia River is now managed according to the joint WDFW and ODFW Eulachon Management Plan (WDFW and ODFW, 2001). Under this plan, three eulachon harvest levels can be authorized based on the strength of the prior years' run, resultant juvenile production estimates, and ocean productivity indices.

Currently the average weekly effort in the Columbia River mainstem fishery is typically low (2.6 boats/week), with up to 18 vessels participating (ODFW, 2009). In Washington, by permanent rule, commercial fishing for eulachon in the Columbia and Cowlitz rivers is restricted. On the Columbia River, otter trawl gear may be used from 6 p.m. Monday to 6 p.m. (1) on Wednesday of each week from March 1 through March 31, or (2) for boats not exceeding 32 feet in length, 7 days per week from December 1 through March 31 of the following year. Gillnets may be used 7 days per week from December 1 through March 31 of the following year. Hand dip net gear may be used 7 days per week from December 1 of each year through March 31 of the following year. In recent years the January-March fishing periods were closed prior to January 1 by emergency rule, and specific fishing periods were adopted in accordance with the restrictions identified in the Washington and Oregon Eulachon Management Plan (WDFW and ODFW, 2001). Due to low eulachon abundance, the Department of Fisheries and Oceans Canada (DFO) did not authorize any commercial fishing for eulachon in 2008. Historically, commercial fishing for eulachon occurred at low levels in the Fraser River (as compared to the Columbia River). Since 1997, DFO has only twice allowed a commercial harvest of eulachon in the Fraser River (DFO, 2008).

Recreational Fishing

The states of Oregon and Washington have modified sport fishing regulations due to declining eulachon abundance (WDFW and ODFW, 2001). During the eulachon run, the ODFW allows recreational fishers to capture 25 lb (11 kg) per day of eulachon, using a dip net. Each fisher must have his or her own container and only the first 25 lbs (11 kg) of fish captured may be retained. No angling license is required to harvest eulachon in Oregon. The WDFW currently allows harvest of eulachon by dip netting on the Cowlitz River, from 6 a.m. to 10 p.m. on Saturdays from January 1 through March 31. The daily limit on the Cowlitz River is 10 lb (4.5 kg) per person per day. In Washington, the mainstem Columbia River is open for eulachon harvest 24 hours per day and 7 days per week during the eulachon run, and the daily limit is 25 lb (11 kg) per person per day. ODFW and WDFW plan to continue authorizing eulachon sport fishing at appropriate harvest levels based on yearly predictions of eulachon run size. Under the strictest proposed regulations, harvest would be limited to less than 10 percent of the predicted run size. If run size increases beyond predicted levels, then ODFW and WDFW would consider allowing additional harvest (but these more liberal harvest rates have not been specified).

In California, the California Department of Fish and Game (CDFG) currently allows licensed recreational fishers to dipnet up to 25 lb (11 kg) of eulachon per day per person year-round (CDFG, 2008). However, in practice, little to no fishing in California occurs because so few eulachon return each year. In 2008, DFO Canada did not authorize any recreational fishing for eulachon due to low abundance. In general, interest in recreational fishing for eulachon has decreased significantly due to the difficulty of harvesting these fish at their current low abundance.

Tribal Subsistence Fishing

In the past, eulachon were an important food source for Canadian First Nations and many Native American tribes from northern California to Alaska. In more recent history, tribal members in the U.S. harvest eulachon under recreational fishing regulations adopted by the states. The DFO typically authorizes a small subsistence fishery for First Nation members, primarily in the Fraser River. Historically, members of the Yurok Tribe harvested eulachon in the Klamath River in California for subsistence purposes. The Yurok Tribe does not have a fishery management plan for eulachon at this time, and eulachon abundance levels on the Klamath are too low to support a fishery.

Disease or Predation

The BRT identified disease as a low risk factor for all four subpopulations of the southern DPS of eulachon. Although Willson *et al.*, (2006) identify common parasites of eulachon, the BRT did not review any information indicating that disease was a significant problem for this DPS. Predation, primarily from marine mammals, fishes, and birds, was identified as a moderate threat to eulachon in the Fraser River and mainland British Columbia rivers, and a low severity threat to eulachon in the Columbia and Klamath rivers where there is a lower abundance of some predators. Large numbers of predators commonly congregate at eulachon spawning runs (Willson *et al.*, 2006). Eulachon rely on swimming in large numbers and synchronized spawn timing to ensure that adequate numbers of fish escape predators and reproduce successfully. High levels of predation may jeopardize population viability during times of low eulachon abundance.

The Inadequacy of Existing Regulatory Mechanisms

The BRT identified bycatch of eulachon in commercial fisheries as a moderate threat to all four populations in the Southern DPS. In the past, protection of forage fishes has not been a priority when developing ways to reduce bycatch in shrimp fisheries. The marine areas occupied by shrimp and eulachon often overlap, making eulachon particularly vulnerable to capture in shrimp fisheries in the United States and Canada. In Oregon shrimp fisheries, the bycatch of various species of smelt (including eulachon) has been as high as 28 percent of the total catch weight (Hannah and Jones, 2007). In Canada, bycatch of eulachon in shrimp fisheries has been significant enough in some years to cause the DFO Canada to close the fishery (DFO, 2008). In 2000, we declared canary rockfish (*Sebastes pinniger*) overfished. In response, the states of Oregon, Washington, and California enacted regulations that require BRDs for canary rockfish on trawl gear used in the ocean shrimp fishery. The BRDs were successful in reducing bycatch of all finfish species (Hannah and Jones, 2007). However, little is known about the degree of injury and mortality eulachon experience as they pass through BRDs and it is not certain what percent of eulachon traveling through BRDs survive. In Oregon, these devices have been shown to reduce the smelt (including eulachon) bycatch to between 0.25 and 1.69 percent of the total catch weight (Hannah and Jones, 2007). The DFO sets bycatch limits for the Canadian shrimp fishery, and the shrimp trawl industry in Canada adopted 100 percent use of BRDs in 2000 (DFO, 2009a). The DFO will implement further management actions if estimated eulachon bycatch meets or exceeds the identified level (DFO, 2009b). Management actions that may be taken by DFO include: closing the entire shrimp trawl fishery; closing certain areas to shrimp trawling; or restricting trawling to beam trawlers,

which have been found to have a lower impact on eulachon than otter trawlers.

Other Natural or Manmade Factors Affecting Its Continued Existence

Natural events such as volcanic eruptions may cause significant local declines in eulachon abundance by causing catastrophic debris flows in rivers and drastically increasing fine sediments in substrates. After the eruption of Mt. St. Helens in 1980, the U.S. Army Corps of Engineers constructed a large sediment retention structure on the Toutle River. This structure was built to prevent debris avalanches resulting from the eruption from moving downstream and causing navigation problems (e.g., filling of the Columbia River shipping channel). Although the structure is designed to reduce the level of fine sediment traveling down the Toutle River and into the Cowlitz River, there is some concern that water released from the structure in the spring may contain a high sediment load that could adversely affect eulachon spawning by destroying or reducing the viability of eggs and spawning sites.

Efforts Being Made to Protect the Southern Distinct Population Segment of Eulachon

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species. Therefore, in making ESA listing determinations, we first identify factors that have led to a species' decline and assess the level of extinction risk. We then assess efforts being made to protect the species to determine if those measures ameliorate the risks faced by the DPS.

The ESA requires us to take into account all conservation efforts being made to protect a species. Oregon and Washington both have abundance-based harvest management regimes that limit harvest impacts at low run sizes. However, it is unknown if these regimes are adequate for conservation. DFO Canada also manages recreational and commercial harvest of eulachon in Canada with abundance-based harvest management regimes. Both recreational and commercial eulachon fisheries in Canada have been limited or closed in recent years due to low eulachon abundance.

Although no efforts specific to eulachon are currently being made to protect freshwater habitat in the United States, this species indirectly benefits from many Federal, state, and tribal regulatory and voluntary aquatic habitat improvement programs aimed at other species. Based on the available information on eulachon biology, the physical habitat features most likely to be important to eulachon reproduction in fresh water are water quantity, water quality (especially temperature), free passage, and substrate condition. Federal programs carried out under laws such as the Federal Clean Water Act (CWA) of 1972 help to ensure that water quality is maintained or improved and that discharge of fill material into rivers and streams is regulated. Several sections of this law, such as section 404 (discharge of fill into wetlands), section 402 (discharge of pollutants into water bodies), and section 404(d) (designation of water quality limited streams and rivers) regulate activities that might degrade eulachon habitat. Although programs carried out under the CWA are well funded and enforcement of this law occurs, a significant percentage of stream reaches in the range of eulachon do not meet current water quality standards. This indicates that although current programs provide some protection, they are not sufficient to fully protect eulachon habitat.

Section 10 of the Rivers and Harbors Act prohibits placement of any structure in any navigable waterway of the United States without approval from the Army Corps of Engineers (USACE). Most or all freshwater eulachon habitat in the United States is considered to be navigable, and it is not expected that any additional major obstructions (i.e., dams) to eulachon migration would be constructed within their range. Smaller structures such as weirs and fish traps intended for fishery management may be placed in some tributaries of the Columbia River, but it is unclear to what degree these may pose a barrier to eulachon migration (see *http://www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/Hatcheries/Mitchell-Act-EIS.cfm* and NMFS, 2004).

Potential eulachon impacts from dredging activities associated with the USACE Columbia River Channel Improvement Project will be addressed in the Columbia River Channel Improvement Project Adaptive Management Process. WDFW is a member of the Adaptive Management Team that implements this process. State regulatory programs that protect eulachon habitat include wetland/waterway fill-removal programs such as those administered by the Oregon Department of State Lands and the Washington Department of Ecology. Similar to the Federal CWA, these programs regulate filling of wetlands and discharge of fill material that might adversely affect eulachon spawning habitats. In addition, the State of California protects water quality and associated beneficial uses through administration of the Porter-Cologne Act, (also similar to the Federal CWA), and implementation of CDFG 1602 regulations. Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify the Department before beginning any activity that will do one or more of the following: (1) substantially divert or obstruct the natural flow of any river, stream or lake; (2) substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. In Canada, dredging is not allowed in the Fraser River during early March to June to protect spawning eulachon. We are not aware of any other specific measures taken to protect eulachon freshwater habitat in Canada.

In general, the described regulatory programs within California, Oregon and Washington are aimed at protecting important riverine and wetland functions, such as maintaining a properly functioning riparian plant community, storing groundwater, and preserving floodplain roughness. They are also aimed at reducing the discharge of fine sediments that might alter or degrade spawning substrates used by eulachon. Therefore it is reasonable to conclude that these laws will provide some protection to eulachon habitat.

The range of eulachon in the Pacific Northwest and California largely or completely overlaps with the range of several ESA-listed stocks of salmon and steelhead as well as green sturgeon (*Acipenser medirostris*). Although the habitat requirements of these fishes differ somewhat from eulachon, efforts to protect habitat generally focus on the maintenance of watershed processes that would be expected to benefit eulachon. In particular, the numerous ESA section 7 consultations carried out on Federal activities throughout the range of eulachon provide a significant level of habitat protection. These and other protective efforts for salmon and steelhead are described in detail in our proposed listing determinations for 27 species of West Coast salmon and steelhead (69 FR 33102, June 14, 2004). Efforts to protect green sturgeon are described in our proposed listing determination for this species (70 FR 17386, April 6, 2005).

The development and operation of the Federal Columbia River Power System

(FCRPS) and Bureau of Reclamation irrigation projects in the Columbia River basin have altered the hydrology of this river system. We have worked with the USACE, Bonneville Power Administration, and Bureau of Reclamation to develop mitigation measures to minimize the adverse effects of these projects on ESA-listed salmon and steelhead. On May 5, 2008, we issued final biological opinions on the operation of the FCRPS and Upper Snake River Irrigation Projects, and on September 15, 2009, we filed a revised plan in U.S. District Court to implement the biological opinions. The planned mitigation measures, including additional water releases in the spring and predator control programs, will benefit eulachon as well. Since eulachon are known to be plentiful in systems with a strong spring freshet, releasing additional water in the spring to increase survival of juvenile salmon and steelhead is likely to move the hydrograph of the Columbia River to a state more similar to that under which eulachon evolved.

Throughout the eulachon's range in Oregon, Washington, and California, an array of Federal, state, tribal, and local entities carry out aquatic habitat restoration programs. These programs are generally intended to benefit other fish species such as salmon, steelhead, and trout, but eulachon also benefit. Although these programs are too numerous to list individually, some of the larger programs include the Bonneville Power Administration's Columbia Basin Fish and Wildlife Program, the Pacific Coast Salmon Recovery Fund, the Lower Columbia Fish Recovery Board, and the Oregon Watershed Enhancement Board. The Federal land managers (i.e., the U.S. Forest Service, U.S. Bureau of Land Management, and National Park Service) also carry out aquatic restoration projects in some watersheds where eulachon migrate and spawn. These agencies have been conducting restoration projects in these areas for many years, and projects located in the lower reaches of rivers (where eulachon spawn) are likely to provide some benefit to eulachon. Marine waters are managed by state and Federal Governments. At this time, we do not know enough about eulachon use of nearshore ocean habitats to determine the degree to which existing marine habitat management benefits eulachon.

Final Listing Determination

Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species. We have reviewed the petition, the two reports of the BRT (NMFS, 2008, 2010), co-manager comments, peer review, public comments and other available published and unpublished information, and we have consulted with species experts and other individuals familiar with eulachon.

Based on this review, we conclude that eulachon populations spawning from the Skeena River in British Columbia (inclusive) south to the Mad River in Northern California (inclusive) meet the discreteness and significance criteria for a DPS (61 FR 4722, February 7, 1996; NMFS, 2008). These southern DPS eulachon are discrete from eulachon occurring north of this area based on differences in spawning temperatures; length- and weight-at-maturity in the species' range; ecological features of both the marine and freshwater environments occupied by eulachon; and genetic characteristics. The southern DPS is significant to the species as a whole because it constitutes over half of the geographic range of the taxonomic species' distribution, and it includes two of the known major production areas (Columbia and Fraser rivers) and a third area that may have been historically a major production area (Klamath River). Although eulachon are rarely seen in the Klamath River at present, sampling in 2007 confirmed they are still found there in small numbers. The loss of the southern DPS would create a significant reduction in the species' overall distribution.

Ongoing efforts to protect Pacific salmonids, as described in the previous section, are also likely to benefit Pacific eulachon and their habitat. However, these efforts do not comprehensively address the threats to eulachon from climate change, altered freshwater habitat and bycatch in the shrimp fishery.

Based on the best scientific and commercial information available, including the draft and final BRT reports, we believe that the southern DPS of eulachon is not presently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. Factors supporting a conclusion that the DPS is not presently in danger of extinction include: (1) two core spawning areas have sufficient numbers of eulachon to support spawning, at least at low levels; (2) as observed in the recent past (2001–2003), a reversion to favorable ocean conditions could result in a rebound in abundance; and (3) the species likely strays at a moderate-to-high rate, so that depressed populations could rebuild in the presence of favorable environmental conditions.

Factors supporting a conclusion that the DPS is likely to become in danger of extinction in the foreseeable future include: (1) low and declining abundance in all surveyed populations, including the two remaining core populations, compromising their ability to rebound; (2) abundance that has likely decreased below the minimum viable population size for several sub-areas of the DPS (e.g. Klamath River, Bella Coola River, Rivers Inlet); and (3) available information suggesting that eulachon in Northern California experienced an abrupt decline several decades ago and, although still present at very low numbers, it is unknown if these fish represent a viable self-sustaining population.

In sum, the current abundance of eulachon is low and declining in all surveyed populations throughout the DPS. Future declines in abundance are likely to occur as a result of climate change and continued bycatch in the shrimp fishery. Taken together, these two points indicate that the southern DPS of eulachon is likely to become endangered in the foreseeable future. Therefore, we are listing the southern DPS of eulachon as a threatened species, as of the effective date of this rule.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits the take of endangered species. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether, and to what extent, to extend the section 9(a) "take" prohibitions to the species, and authorizes us to issue regulations it considers necessary and advisable for the conservation of the species. Thus, we have flexibility under section 4(d) to tailor protective regulations, taking into account the effectiveness of available conservation measures. The section 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These prohibitions and regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. We will evaluate protective regulations pursuant to section 4(d) for the southern DPS of eulachon and issue proposed

regulations in forthcoming rules that will be published in the **Federal Register**.

Section 7(a)(2) of the ESA requires Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing or that will result in the destruction or adverse modification of proposed critical habitat. Once a species is listed as threatened or endangered, section 7(a)(2) requires Federal agencies to ensure that any actions they fund, authorize, or carry out do not jeopardize the continued existence of the species. Once critical habitat is designated, section 7(a)(2) also requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. Our section 7 regulations require the responsible Federal agency to initiate formal consultation if a Federal action may affect a listed species or its critical habitat, (50 CFR 402.14(a)). Examples of Federal actions that may affect southern DPS eulachon include coastal development, dredging, operation of hydropower facilities, point and non-point source discharge of persistent contaminants, contaminated waste disposal, adoption of water quality standards, regulation of newly emerging chemical contaminants, research and monitoring, and fishery harvest and management practices.

Sections 10(a)(1)(A) and (B) of the ESA provide us with authority to grant exceptions to the ESA's Section 9 "take" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets eulachon.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species, as long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Effective Date of the Final Listing Determination

We recognize that numerous parties may be affected by the listing of the southern DPS of eulachon. To permit an orderly implementation of the consultation requirements applicable to threatened species, the final listing will take effect on May 17, 2010.

Critical Habitat

Section 3(5)(A) of the ESA defines critical habitat as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species."

Section 4(a)(3) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat.

In determining what areas qualify as critical habitat, 50 CFR 424.12(b) requires that we consider those physical or biological features that are essential to the conservation of a given species including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species. The regulations further direct NMFS to "focus on the principal biological or physical constituent elements . . . that are essential to the conservation of the species," and specify that the "[k]nown primary constituent elements shall be listed with the critical habitat description." The regulations identify primary constituent elements (PCEs) as including, but not limited to: "roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dry land, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types."

In our proposal to list the southern DPS of eulachon, we requested information on the quality and extent of freshwater and marine habitats that may qualify as critical habitat. Specifically, we requested identification of specific areas that meet the definition of critical habitat defined above. We also solicited biological and economic information relevant to making a critical habitat designation for the southern DPS of eulachon. We have reviewed the comments provided and the best available scientific information. We conclude that critical habitat is not determinable at this time for the following reasons: (1) sufficient information is not currently available to assess impacts of designation; (2) sufficient information is not currently available on the geographical area occupied by the species; and (3) sufficient information is not currently available regarding the physical and biological features essential to conservation.

Classification

National Environmental Policy Act (NEPA)

ESA listing decisions are exempt from the requirements to prepare an environmental assessment or environmental impact statement under the NEPA. See NOAA Administrative Order 216 6.03(e)(1) and *Pacific Legal Foundation* v. *Andrus657 F2d 829 (6th Cir. 1981)* . Thus, we have determined that this final listing determination for the southern DPS of eulachon is exempt from the requirements of the NEPA of 1969.

Executive Order (E.O.) 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13084 – Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal Government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this final rule.

Nonetheless, we will continue to inform potentially affected tribal governments, solicit their input, and coordinate on future management actions.

E.O. 13132 – Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the proposed rule was provided to the relevant state agencies in each state in which the species is believed to occur, and these agencies were invited to comment. We have conferred with the States of Washington, Oregon and California in the course of assessing the status of the southern DPS of eulachon, and their comments and recommendations have been considered and incorporated into this final determination where applicable.

References

A list of references cited in this notice is available upon request (see **ADDRESSES**) or via the Internet at *http://www.nwr.noaa.gov*. Additional information, including agency reports and written comments, is also available at this Internet address.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: March 12, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9) *et seq.*

■ 2. In § 223.102, amend paragraph (c) by adding and reserving paragraphs (c)(26) and (c)(27) and adding a new paragraph (c)(28) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(c) * * *

Species[1]		Where Listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
* *	*	*	*	* *
(28) eulachon - southern DPS	*Thaleichthys pacificus*	Wherever Found	[INSERT FR PAGE CITATION & March 18, 2010]	[INSERT FR PAGE CITATION & March 18, 2010]
* *	*	*	*	* *

[1]Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. 2010–5996 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 100119028–0123–02]

RIN 0648–AY31

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule.

SUMMARY: The Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch Sharing Plan (CSP) for Area 2A (waters off the U.S. West Coast) and implementing regulations for 2010, and announces approval of the Area 2A CSP. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) (Councils).

DATES: The amendment to § 300.63 is effective April 19, 2010. The IPHC's 2010 annual management measures are effective March 1, 2010, except for the measures in section 26 which are effective April 19, 2010. The 2010 management measures are effective until superseded.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting: The International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145–2009; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, *Attn:* Ellen Sebastian, Records Officer; or Sustainable Fisheries Division, NMFS Northwest Region, 7600 Sand Point Way, NE., Seattle WA 98115. This final rule also is accessible via the Internet at the Government Printing Office's Web site at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For waters off Alaska, Peggy Murphy, 907–586–8743, e-mail at *peggy.murphy@noaa.gov;* or, for waters off the U.S. West Coast, Sarah Williams, 206–526–4646, e-mail at *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2010 under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as

amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). On March 1, 2010, the Secretary of State of the United States accepted the 2010 IPHC regulations as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773–773k.

The Halibut Act provides the Secretary of Commerce (Secretary) with the authority and general responsibility to carry out the requirements of the Convention and the Halibut Act. The Regional Fishery Management Councils may develop and the Secretary may implement regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with approved IPHC regulations. The NPFMC has exercised this authority most notably in developing a suite of halibut management programs that correspond to the three fisheries that harvest halibut in Alaska—the subsistence, sport, and commercial fisheries. In 2009/2010, these programs were revised by regulations recommended by the NPFMC. Criteria for qualifying as a rural resident to participate in subsistence fishing for halibut in Area 2C through 4E were changed December 4, 2009 (74 FR 57105), by expanding the boundaries of rural areas and some rural communities. More extensive regulations were implemented for sport halibut fisheries. Effective June 5, 2009, in Area 2, harvest of halibut by charter vessel anglers was limited to one halibut per day, charter vessel guide and crew were prohibited from harvesting halibut, and the number of fishing lines used was limited to the number of vessel anglers on board not to exceed six lines (74 FR 21194). A limited access system for guided charter vessels (75 FR 554) was also established January 5, 2010, for Areas 2C and 3A (75 FR 554) based on a licensed charter fishing business owner's past participation in the charter halibut fishery. Changes in subsistence and sport halibut fishery management measures are codified at 50 CFR 300. Commercial halibut fisheries in Alaska operate within the Individual Fishing Quota (IFQ) Program and Community Development Quota (CDQ) Program (50 CFR part 679) and through area-specific catch sharing plans. Regulations for a commercial and sport fishery Halibut CSP are being developed pursuant to the NPFMC authority under the Halibut Act. The PFMC also exercises authority in a CSP among groups of halibut fishermen in Area 2A; Washington, Oregon, and California. The CSP allocates the Area 2A catch limit among treaty Indian and non-Indian harvesters, and non-Indian commercial and sport harvesters. The treaty Indian group may include tribal commercial and tribal ceremonial and subsistence fisheries.

The structure of each Council's CSP affects how each plan is promulgated. The Secretary implemented the Area 2A CSP recommended by the PFMC in 1995. Each year between 1995 and the present, the PFMC has adopted minor revisions to the plan to account for needs of the fisheries. These revisions are implemented in regulations for the Area 2A CSP through annual rule making and annual IPHC review and recommendation of management measures for Secretarial review. The Area 2A CSP regulations are part of the IPHC annual management measures and are superseded each year by new implementing regulations.

The NPFMC implemented a CSP among commercial IFQ and CDQ halibut fisheries in IPHC Areas 4C, 4D and 4E (Area 4) through rulemaking and the Secretary approved the plan on March 20, 1996 (61 FR 11337). The Area 4 CSP regulations were codified in the Code of Federal Regulations (50 CFR 300.65) and amended through rule making on March 17, 1998 (63 FR 13000). New annual regulations pertaining to the Area 4 CSP also may be implemented through IPHC review and recommendation for Secretarial review.

Publication of this final rule announces that the U.S. Secretary of State has accepted the annual management measures recommended by the IPHC, implements Area 2A regulations supporting annual management measures recommended by IPHC, and implements the Area 2A CSP. The proposed rule for the Area 2A CSP was published on February 4, 2010 (75 FR 5745).

Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2010 IPHC annual management measures are published in the **Federal Register** to provide notice of their immediate regulatory effect, and to inform persons subject to the regulations of the restrictions and requirements. NMFS could implement more restrictive regulations for the sport fishery for halibut or components of it; therefore, anglers are advised to check the current federal or IPHC regulations prior to fishing.

The IPHC held its annual meeting in Seattle, Washington, January 26–29, 2010, and adopted regulations for 2010. The changes to the previous IPHC regulations (74 FR 11681, March 19, 2009) include:

1. New halibut catch limits in all regulatory areas;

2. New commercial halibut fishery opening dates;

3. Revisions to the CSP and 2010 recreational management measures for Area 2A;

4. Changes to the regulations regarding 2A license requirements for persons fishing in Subarea 2A–1 as treaty Indian tribal fishers;

5. Changes to vessel number recording requirements on state fish tickets in Washington; and

6. Correction to the Cape Spencer Light coordinates to match the U.S. Coast Guard Light List.

Catch Limits

The IPHC recommended to the governments of Canada and the United States catch limits for 2010 totaling 50,670,000 pounds (22,983 mt), a 6.3 percent reduction from the 2009 catch limit. The decline in the catch limit is attributed to the exceptionally strong 1987 and 1988 year classes passing out of the fishery. The 1999 and 2000 year classes are estimated to be above average but the lower growth rates of fish in recent years means that these year classes are recruiting to the exploitable stock very slowly.

The IPHC staff reported on the 2009 assessment of the Pacific halibut stock that estimated coastwide biomass, with apportionment to regulatory biomass based on the data from the annual IPHC assessment survey. The total of the IPHC staff catch limit recommendations was accepted, although the Commissioners' area apportionment differed slightly.

The IPHC recommended a 20 percent harvest rate for Areas 2A through Area 3A and a harvest rate of 15 percent for Areas 3B, 4A, 4B and 4CDE. The harvest rate for area 3B was reduced from 20 percent to 15 percent because of concern over continued decline in catch rates. Catch limits adopted by the IPHC for 2010 were lower as compared to 2009 for most regulatory areas except: Areas 4B and 4CDE where the IPHC, with advice from its advisory bodies, recommended catch limits that are approximately 15 percent and 3 percent higher, respectively, than in 2009.

Commercial Halibut Fishery Opening Dates

The opening date for the tribal commercial fishery in Area 2A and for the commercial halibut fisheries in Areas 2B through 4E is March 6, 2010. The date takes into account a number of factors including tides, timing of halibut migration and spawning, marketing for seasonal holidays, and interest in getting product in to the processing plants before the herring season opens.

The closing date for the halibut fisheries is November 15, 2010.

In the Area 2A directed fishery, each fishing period shall begin at 0800 hours and terminate at 1800 hours local time on June 30, July 14, July 28, August 11, August 25, September 8, and September 22, 2010, unless the IPHC specifies otherwise. These 10-hour openings will occur until the quota is taken and the fishery is closed.

Area 2A Rockfish Conservation Area (RCA) Coordinate Updates

Updates to the coordinates for the codified boundaries of the non-trawl Rockfish Conservation Area (RCA) at 50 CFR 300.63, are necessary to make them consistent with the RCA boundaries in the groundfish regulations at 50 CFR 660 Table 4. The RCAs for both fisheries serve the same purpose, protection of overfished groundfish, and so the boundaries are meant to be the same. Most commercial halibut fishermen also participate in the groundfish fishery, so they are familiar with these boundaries. Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of the non-trawl RCA, which extends along the coast. The eastern and western boundaries of the RCA vary along the coast. Because the boundaries of the RCA are intended to be the same for both groundfish and halibut fisheries, this rule updates the coordinates in the halibut regulations for some depth contour lines and RCA boundaries to make them consistent with the current groundfish regulations and RCA boundaries.

Incidental Halibut Retention in the Primary Sablefish Fishery North of Pt. Chehalis, Washington

According to the Area 2A CSP, incidental halibut retention will not be allowed in the primary directed sablefish fishery north of Point Chehalis, WA, unless the Area 2A TAC is at least 900,000 lb (408.2 mt). Because the Area 2A TAC for 2010 is 810,000 lb (367.4 mt), this incidental retention is not permitted. Regulations to prohibit halibut retention in the primary sablefish fishery will be addressed by the PFMC at its March 2010 meeting and implemented by NMFS through an inseason adjustment on or before May 1, 2010. It is necessary to implement any changes to the groundfish regulations on or before May 1, 2010, because this is when the current groundfish regulations, which permit halibut retention in the primary sablefish fishery, would become effective, therefore allowing retention when there is no quota.

Catch Sharing Plan (CSP) and 2010 Recreational Management Measures for Area 2A

For 2010 and beyond, the PFMC recommended changes to the Federal regulations and the CSP to modify the Pacific halibut fisheries in Area 2A to:

1. Specify that the Washington South Coast Subarea primary season will be open Sunday and Tuesday through the third week in May, open on Sunday only for the fourth week in May and return to Sunday and Tuesday after the fourth week in May;

2. Specify that the Washington South Coast Subarea nearshore area will be open seven days per week;

3. Revise the northern and western boundaries of the Washington nearshore area;

4. Specify that lingcod retention is allowed in the Washington South Coast Subarea seaward of the 30-fm line and on days when the primary fishery is open; and

5. Change the open days in the Oregon Central Coast Subarea summer all depth fishery from three days per week to two days per week, Friday and Saturday.

NMFS published a proposed rule on February 4, 2010 (75 FR 5745), to implement the PFMC's recommended changes to the Federal regulations and the CSP, and to implement the 2010 Area 2A sport fishing season regulations.

This final rule publishes the Annual Management Measures for the 2010 Pacific Halibut Fisheries, approves the Catch Sharing Plan for Area 2A, and implements changes to the Area 2A Catch Sharing Plan and Federal regulations. These halibut management measures are effective until superseded by the 2011 halibut management measures, which will be published in the **Federal Register.**

Comments and Responses

NMFS accepted comments through February 19, 2010, on the proposed rule to the Area 2A CSP and received four public comments. One letter from an individual suggested opening dates for the halibut sport fishery in Washington; one letter from the Department of Interior stated they had no comments; and one comment letter each from Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW) recommended season dates for halibut sport fisheries in each state.

Comment 1: The WDFW held a public meeting following the final TAC recommendations by the IPHC, to review the results of the 2009 Puget Sound halibut fishery, and to develop season dates for the 2010 sport halibut fishery. Based on the 2010 Area 2A total allowable catch of 810,000 pounds (367.4 mt), the halibut quota for the Puget Sound sport fishery is 50,542 lb (22.9 mt). Because the catch in this area exceeded the quota in 2008 and 2009 WDFW used a new method to estimate the season dates. The new method examined the average weight, catch per day and the highest catch per day for the last five years to estimate the season dates for 2010. WDFW recommends that the regions within the Puget Sound sport halibut fishery will be open: in the Eastern Region from May 1–22, Thursday through Saturday and May 28–30, Friday through Sunday; in the Western Region from May 28–30, Friday through Sunday, and from June 3–19, Thursday through Saturday.

Response: NMFS agrees with WDFW's recommended Puget Sound season dates. These dates will help keep this area within its quota, while providing for angler enjoyment and participation. Therefore, NMFS implements the dates with this final rule.

Comment 2: ODFW held a public meeting following the final TAC decision by the IPHC, to gather comments on the open dates for the recreational all-depth fishery in Oregon's Central Coast Sub-area. Since 2004, the number of open fishing days that could be accommodated in the spring fishery has been roughly constant. The catch limit for this sub-area's spring season will be 105,948 lb (48.05 mt) in 2010, based on the IPHC's 2010 TAC for Area 2A. Because of the reduced TAC for 2010, ODFW recommends setting a Central Coast all-depth fishery of 9 days, the 2009 fishery was scheduled for 12 days, with 12 additional back-up dates, in case the sub-area's spring quota is not taken in the initial 9 days. ODFW recommends the following days for the spring fishery, within this sub-area's parameters for a Thursday–Saturday season and with weeks of adverse tidal conditions skipped: Regular open days of May 13, 14, 15, 20, 21, and 22, and June 3, 4, and 5; back-up open days of June 17, 18, and 19, and July 1, 2, 3, 15, 16, 17, 29, 30, and 31. For the summer fishery in this sub-area, ODFW recommended following the CSP's parameters of opening the first Friday in August, with open days to occur every other Friday–Sunday, unless modified in-season within the parameters of the CSP. Under the CSP, the 2010 summer all-depth fishery in Oregon's Central Coast Sub-area would occur: August 6, 7, 20, and 21, and September 3, 4, 17, and 18, and October 1, 2, 15, 16, 29, and 30.

Response: NMFS agrees with ODFW's recommended Central Coast season dates. These dates will help keep this area too within its quota, while providing for angler enjoyment and participation. NMFS, therefore implements the dates via this final rule.

Comment 3: The commenter suggested that the opening date of the sport fishery in the Puget Sound Western egion should be May 20 because this is historically the date the area has opened, people may have already planned for this date and the tides on this date are more favorable than the tides the following week.

Response: In their public comments, WDFW recommended an opening date of May 28 in the Western Region of Puget Sound rather than May 20. Because the Puget Sound Subarea quota has been exceeded in recent years, for 2010 WDFW has taken a new approach for estimating the fishing days needed to attain full access to the subarea quota. The goal of the dates recommended by WDFW is to provide the longest season possible while still providing quality fishing opportunities. NMFS agrees with WDFW recommendations for a May 28 opening date in this subarea.

Comment 4: The U.S. Department of Interior submitted one comment letter stating they had no comments.

Response: Because there was no comment made NMFS does not have a response.

Changes From the Proposed Rule

On February 4, 2010, NMFS published a proposed rule on changes to the CSP and recreational management measures for Area 2A (75 FR 5745). The final catch limits and total allowable catch numbers were not available until January 29, 2010, which was after the proposed rule needed to be drafted and routed to the Office of the Federal Register for timely publication. The proposed rule, therefore, was issued based on the preliminary estimate of the 2A TAC of 760,000 pounds. The final 2A TAC is 810,000 pounds which is higher than the preliminary estimate for 2010, but lower than the 2009 2A TAC of 950,000 pounds. Most of the changes in this final rule are updates to subarea catch limits based on the final TAC. There are no other substantive changes from the proposed rule.

Annual Halibut Management Measures

The following annual management measures for the 2010 Pacific halibut fishery are those recommended by the IPHC and accepted by the Secretary of State, with the concurrence of the Secretary. The sport fishing regulations for Area 2A, included in paragraph 26, are consistent with the measures adopted by the IPHC and approved by the Secretary of State, but were developed by the Pacific Fishery Management Council and promulgated by the United States under the Halibut Act.

1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 20 apply to commercial fishing for halibut.

(4) Section 21 applies to tagged halibut caught by any vessel.

(5) Section 22 applies to the United States treaty Indian fishery in Subarea 2A–1.

(6) Section 23 applies to customary and traditional fishing in Alaska.

(7) Section 24 applies to Aboriginal groups fishing for food, social and ceremonial purposes in British Columbia.

(8) Sections 25 to 28 apply to sport fishing for halibut.

(9) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

3. Interpretation

(1) In these Regulations,

(a) "authorized officer" means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Wildlife Troopers (AWT), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) "authorized clearance personnel" means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) "charter vessel" means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) "commercial fishing" means fishing, the resulting catch of which is sold or bartered; or is intended to be sold or bartered, other than (i) sport fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to NMFS regulations published at 50 CFR Part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(e) "Commission" means the International Pacific Halibut Commission;

(f) "daily bag limit" means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) "fishing" means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) "fishing period limit" means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) "land" or "offload" with respect to halibut, means the removal of halibut from the catching vessel;

(j) "license" means a halibut fishing license issued by the Commission pursuant to section 4;

(k) "maritime area", in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) "net weight" of a halibut means the weight of halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2% deduction for ice and slime and a 10% deduction for the head.

(m) "operator", with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(n) "overall length" of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(o) "person" includes an individual, corporation, firm, or association;

(p) "regulatory area" means an area referred to in section 6;

(q) "setline gear" means one or more stationary, buoyed, and anchored lines with hooks attached;

(r) "sport fishing" means all fishing other than (i) commercial fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in

section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR Part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(s) "tender" means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(t) "VMS transmitter" means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider.[1]

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both

(a) the directed commercial fishery during the fishing periods specified in paragraph (2) of section 8; or

(b) the incidental catch fishery during the salmon troll fishery specified in paragraph (3) of section 8.

(5) A license issued in respect of a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect of a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 PM on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 PM on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or the documentation is changed.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, CFR Part 904.

5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) will not result in exceeding the catch limit established preseason for each regulatory area;

(b) is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

(a) closed areas;

(b) fishing periods;

(c) fishing period limits;

(d) gear restrictions;

(e) recreational bag limits;

(f) size limits; or

(g) vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

6. Regulatory Areas

The following areas shall be regulatory areas (*see* Figure 1) for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′56″ N. latitude, 136°38′26″ W. longitude) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. latitude, 155°35′00″ W. longitude) to Cape Ikolik (57°17′17″ N. latitude, 154°47′18″ W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. latitude, 154°08′44″ W. longitude), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. latitude, 164°20′00″ W. longitude) and south of 54°49′00″ N. latitude in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00′00″ W. longitude and south of 56°20′00″ N. latitude;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. latitude;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00′00″ W. longitude, south of 58°00′00″ N. latitude, and west of 168°00′00″ W. longitude;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. longitude;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00′00″ W. longitude, and south of 65°34′00″ N. latitude.

7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community

[1] Call NOAA Enforcement Division, Alaska Region, at 907–586–7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

Development Quota (CDQ) or Area 4D CDQ halibut provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to November 1 of the year in which such halibut were harvested.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed commercial fishery[2] [3] shall begin at 0800 hours and terminate at 1800 hours local time on June 30, July 14, July 28, August 11, August 25, September 8, and September 22 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS.

(4) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 6 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(5) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved referred to in paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

All waters in the Bering Sea north of 55°00′00″ N. latitude in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. latitude, 164°55′42″ W. longitude) to a point at 56°20′00″ N. latitude, 168°30′00″ W. longitude; thence to a point at 58°21′25″ N. latitude, 163°00′00″ W. longitude; thence to Strogonof Point (56°53′18″ N. latitude, 158°50′37″ W. longitude); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00′00″ N. latitude and 54°49′00″ N. latitude are closed to halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the net weights expressed in pounds or metric tons shown in the following table.

Regulatory area	Catch limit	
	Pounds	Metric tons
2A: Directed commercial, and incidental commercial during salmon troll fishery	166,900	75.7
2B [4]	7,500,000	3,401.4
2C	4,400,000	1,995.5
3A	19,990,000	9,065.8
3B	9,900,000	4,489.8
4A	2,330,000	1,056.7
4B	2,160,000	979.6
4C	1,625,000	737.0
4D	1,625,000	737.0
4E	330,000	149.7

[4] Area 2B includes combined commercial and sport catch limits which will be allocated by DFO.

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (3) of section 8 will be promulgated by NMFS and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

[2] The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53′18″ N. latitude) under regulations promulgated by NMFS and published in the **Federal Register**.

[3] [Omitted].

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas (IVQs) assigned by DFO are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all IFQs and all CDQs issued by NMFS have been taken, or November 15, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E CDQ fisheries. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

(9) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4D directed commercial fishery is equal to the combined annual catch limits specified for the Area 4C and Area 4D. The annual Area 4C catch limit will decrease by the equivalent amount of halibut taken in Area 4D in excess of the annual Area 4D catch limit.

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on

(a) the vessel's overall length in feet and associated length class;

(b) the average performance of all vessels within that class; and

(c) the remaining catch limit.

(6) Length classes are shown in the following table:

Overall length (in feet)	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that

(a) with the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) with the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by

(a) hook straightening;

(b) cutting the gangion near the hook; or

(c) carefully removing the hook by twisting it from the halibut with a gaff.

(2) Except that paragraph (1) shall not prohibit the possession of halibut on board a vessel that has been brought aboard to be measured to determine if the minimum size limit of the halibut is met and, if sublegal-sized, is promptly returned to the sea with a minimum of injury.

15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs (5), (8), and (9), the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C and 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may

obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C and 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) the operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Areas 4C or 4D or 4E and lands its total annual halibut catch at a port within Areas 4C, 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) the operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR sections 679.28(f)(3), (4) and (5); and

(b) the operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800–304–4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations. The operator of a vessel fishing in waters in and off Alaska must use one of the following logbooks: the Groundfish/IFQ Daily Fishing Longline and Pot Gear Logbook provided by NMFS; the Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association; the Alaska Department of Fish and Game (ADF&G) longline-pot logbook; or the logbook provided by IPHC. The operator of a vessel fishing in Area 2A must use either the Washington Department of Fish and Wildlife (WDFW) Voluntary Sablefish Logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) the name of the vessel and the state (ADF&G, WDFW, Oregon Department of Fish and Wildlife, or California Department of Fish and Game) vessel number;

(b) the date(s) upon which the fishing gear is set or retrieved;

(c) the latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) the number of skates deployed or retrieved, and number of skates lost; and

(e) the total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph shall be

(a) maintained on board the vessel;

(b) updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) retained for a period of two years by the owner or operator of the vessel;

(d) open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Integrated Groundfish Fishing Log provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) the name of the vessel and the DFO vessel number;

(b) the date(s) upon which the fishing gear is set or retrieved;

(c) the latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) the number of skates deployed or retrieved, and number of skates lost; and

(e) the total weight or number of halibut retained for each set or day.

(7) The logbook referred to in paragraph (5) shall be

(a) maintained on board the vessel;

(b) retained for a period of two years by the owner or operator of the vessel;

(c) open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(d) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(e) mailed to the DFO (white copy) within seven days of offloading; and

(f) mailed to the Commission (yellow copy) within seven days of the final offload if not collected by a Commission employee.

(8) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut caught in Area 2A from a United States vessel that does not have on board the license required by section 4.

(2) No person shall possess on board a vessel a halibut other than whole or with gills and entrails removed. Except that this paragraph shall not prohibit the possession on board a vessel of:

(a) halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at 50 CFR Part 679;

(b) fillets from halibut offloaded in accordance with section 17 that are possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload; [5] and

(c) halibut with their heads removed in accordance with section 13.

(3) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.[6]

(4) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(5) A registered buyer (as that term is defined in regulations promulgated by NMFS and codified at 50 CFR Part 679) who receives halibut harvested in IFQ and CDQ fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on federal catch reports: date of offload; name of vessel; vessel number (State, Tribal or Federal, not IPHC vessel number); scale weight obtained at the time of offloading, including the scale weight (in pounds) of halibut purchased by the registered buyer, the scale weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the scale weight of halibut (in pounds) retained for personal use or for future sale, and the scale weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on state fish tickets: the date of offload; vessel number (State, Tribal or Federal, not IPHC vessel number); total weight obtained at the time of offload including the weight (in pounds) of halibut purchased; the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits; the weight of halibut (in pounds) retained for personal use or for future sale; and the weight (in pounds) of halibut discarded as unfit for human consumption.

(7) The individual completing the state fish tickets for the Area 2A fisheries as referred to in paragraph (6) must additionally record whether the halibut weight is of head-on or head-off fish.

(8) For halibut landings made in Alaska, the requirements as listed in paragraph (5) and (6) can be met by recording the information in the Interagency Electronic Reporting Systems, eLandings.

(9) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date; locality; name of vessel; the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased, pounds in excess of IVQs, pounds retained for personal use, and pounds discarded as unfit for human consumption.

(10) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (5), (6), and (9) of section 17.

(11) A copy of the fish tickets or catch reports referred to in paragraphs (5), (6), and (9) shall be

(a) retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) open to inspection by an authorized officer or any authorized representative of the Commission.

(12) No person shall possess any halibut taken or retained in contravention of these Regulations.

(13) When halibut are landed to other than a commercial fish processor, the records required by paragraph (6) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (9).

(14) No person shall tag halibut unless the tagging is authorized by IPHC permit or by a Federal or State agency.

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) has a NMFS-certified observer on board when required by NMFS regulations[7] published at 50 CFR Section 679.7(f)(4); and

(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) has a NMFS-certified observer on board the vessel as required by NMFS regulations published at 50, CFR Section 679.7(f)(4); or has an operational Vessel Monitoring System (VMS) on board actively transmitting in all regulatory areas fished and does not possess at any time more halibut on board the vessel than the IFQ permit holders on board the vessel have cumulatively available for any single Area 4 regulatory area fished; and

(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the holds, tagging halibut, or by other means.

(4) If halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined in the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(2) No person shall possess halibut taken with any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined by the Condition of Sablefish Licence can

[5] DFO has more restrictive regulations; therefore, section 17(2)b does not apply to fish caught in Area 2B or landed in British Columbia.

[6] DFO did not adopt this regulation; therefore, section 17 paragraph (3) does not apply to fish caught in Area 2B.

[7] Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished, even if some of the catch occurred earlier in a different area.

retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following

(a) the vessel's state license number; or

(b) the vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be

(a) floating and visible on the surface of the water; and

(b) legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery shall catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either

(a) made a landing and completely offloaded its catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(8) No vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery may be used to catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either

(a) made a landing and completely offloaded its catch of other fish; or

(b) submitted to a hold inspection by an authorized officer

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain, possess and dispose of halibut taken with trawl gear only as authorized by Prohibited Species Donation regulations of NMFS.

20. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

21. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(a) may be retained for personal use; or

(b) may be sold only if the halibut is caught during commercial halibut fishing and complies with the other commercial fishing provisions of these regulations.

(3) Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by state, provincial, or federal regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in Subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53′18″ N. latitude and east of 125°44′00″ W. longitude, and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and (8) of section 19, apply to commercial fishing for halibut in Subarea 2A–1 by the treaty Indian tribes.

(4) Regulations in paragraph (3) of this section that apply to state fish tickets apply to tribal tickets that are authorized by Washington Department of Fish and Wildlife.

(5) Section 4 (Licensing Vessels for Area 2A) does not apply to commercial fishing for halibut in Subarea 2A–1 by the treaty Indian tribes.

(6) Commercial fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from March 6 through November 15, or until 253,072 pounds (114.8 metric tons) net weight is taken, whichever occurs first.

(7) Ceremonial and subsistence fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 30,428 pounds (13.8 metric tons) net weight.

23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by NMFS and published in 50 CFR Part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

24. Aboriginal Groups Fishing for Food, Social and Ceremonial Purposes in British Columbia

(1) Fishing for halibut for food, social and ceremonial purposes by Aboriginal groups in Regulatory Area 2B shall be governed by the *Fisheries Act* of Canada and regulations as amended from time to time.

25. Sport Fishing for Halibut—General

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(3) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(4) No person may possess halibut on a vessel while fishing in a closed area.

(5) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(6) No halibut caught in sport fishing shall be possessed onboard a vessel when other fish or shellfish aboard said vessel are destined for commercial use, sale, trade, or barter.

(7) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

26. Sport Fishing for Halibut—Area 2A

(1) The total allowable catch of halibut shall be limited to

(a) 192,699 pounds (87.4 metric tons) net weight in waters off Washington and

(b) 166,901 pounds (75.7 metric tons) net weight in waters off California and Oregon;

(2) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.

(3) When the Commission has determined that a subquota under paragraph (8) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(4) In California, Oregon, or Washington, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(5) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit. The possession limit on land in Washington for halibut caught in U.S. waters off the coast of Washington is two halibut.

(6) The possession limit on a vessel for halibut caught in the waters off the coast of Oregon is the same as the daily bag limit. The possession limit for halibut on land in Oregon is three daily bag limits.

(7) The possession limit on a vessel for halibut caught in the waters off the coast of California is one halibut. The possession limit for halibut on land in California is one halibut.

(8) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the in-season actions in 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 50,542 lb (22.9 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50′ W. long., Low Point) is open May 1–22, 3 days per week (Thursday, Friday and Saturday), May 28–30, 3 days per week (Friday, Saturday and Sunday). The fishing season in western Puget Sound (west of 123°49.50′ W. long., Low Point) is open May 28–30, 3 days per week (Friday, Saturday and Sunday) and open June 3–19, 3 days per week (Thursday, Friday and Saturday).

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N. lat.), is 101,179 lb (45.9 mt).

(i) The fishing seasons are:

(A) Commencing on May 13 and continuing 2 days a week (Thursday and Saturday) until 101,179 lb (45.9 mt) are estimated to have been taken and the season is closed by the Commission or until May 29.

(B) If sufficient quota remains the fishery will reopen on June 3 in the entire north coast subarea, continuing 2 days per week (Thursday and Saturday) until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. When there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below will reopen for 2 days per week (Thursday and Saturday), until the overall quota of 101,179 lb (45.9 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After May 29, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after May 29 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(*1*) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(*2*) Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30-fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The recreational halibut 30-fm boundary line is defined by straight lines connecting all of the following points in the order stated:

(1) 48°24.79′ N. lat., 124°44.07′ W. long.;

(2) 48°24.80′ N. lat., 124°44.74′ W. long.;

(3) 48°23.94′ N. lat., 124°44.70′ W. long.;

(4) 48°23.51′ N. lat., 124°45.01′ W. long.;

(5) 48°22.59′ N. lat., 124°44.97′ W. long.;

(6) 48°21.75′ N. lat., 124°45.26′ W. long.;

(7) 48°21.23′ N. lat., 124°47.78′ W. long.;

(8) 48°20.32′ N. lat., 124°49.53′ W. long.;

(9) 48°16.72′ N. lat., 124°51.58′ W. long.;

(10) 48°10.00′ N. lat., 124°52.58′ W. long.;

(11) 48°05.63′ N. lat., 124°52.91′ W. long.;

(12) 47°53.37′ N. lat., 124°47.37′ W. long.;

(13) 47°40.28′ N. lat., 124°40.07′ W. long.; and

(14) 47°31.70′ N. lat., 124°37.03′ W. long.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°18.00′ N. lat.; 125°18.00′ W. long.;

(2) 48°18.00′ N. lat.; 124°59.00′ W. long.;

(3) 48°11.00′ N. lat.; 124°59.00′ W. long.;

(4) 48°11.00′ N. lat.; 125°11.00′ W. long.;

(5) 48°04.00′ N. lat.; 125°11.00′ W. long.;

(6) 48°04.00′ N. lat.; 124°59.00′ W. long.;

(7) 48°00.00′ N. lat.; 124°59.00′ W. long.;

(8) 48°00.00′ N. lat.; 125°18.00′ W. long.; and connecting back to 48°18.00′ N. lat.; 125°18.00′ W. long.

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.), is 35,887 lb (16.2 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N. lat. south to 46°58.00′ N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N.lat, 124°37.03′ W. long;

(2) 47°25.67′ N. lat, 124°34.79′ W. long;

(3) 47°12.82′ N. lat, 124°29.12′ W. long;

(4) 46°58.00′ N. lat, 124°24.24′ W. long.

The south coast subarea quota will be allocated as follows: 33,887 lb (15.3 mt) for the primary fishery and 2,000 lb (0.9 mt) for the nearshore fishery. The primary fishery commences on May 2 and continues 2 days a week (Sunday and Tuesday) until May 18. Beginning on May 23 the primary fishery will be open 1 day per week (Sunday). Beginning on May 30 the primary fishery will be open 2 days per week (Sunday and Tuesday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 28, whichever is earlier. The fishing season in the nearshore area commences on May 2 and continues seven days per week. Subsequent to closure of the primary fishery the nearshore fishery is open seven days per week, until 35,887 lb (16.2 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.384.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast intended to protect yelloweye rockfish. The South Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°58.00′ N. lat., 124°48.00′ W. long.;

(2) 46°55.00′ N. lat., 124°48.00′ W. long.;

(3) 46°55.00′ N. lat., 124°49.00′ W. long.;

(4) 46°58.00′ N. lat., 124°49.00′ W. long.; and connecting back to 46°58.00′ N. lat., 124°48.00′ W. long.

The Westport Offshore YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°54.30′ N. lat., 124°53.40′ W. long.;

(2) 46°54.30′ N. lat., 124°51.00′ W. long.;

(3) 46°53.30′ N. lat., 124°51.00′ W. long.;

(4) 46°53.30′ N. lat., 124°53.40′ W. long.; and connecting back to 46°54.30′ N. lat., 124°53.40′ W. long.

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.) and Cape Falcon, OR (45°46.00′ N. lat.), is 13,436 lb (6.1 mt).

(i) The fishing season commences on May 1, and continues 3 days a week (Thursday, Friday and Saturday) until 9,405 lb (4.29 mt) are estimated to have been taken and the season is closed by the Commission or until July 17, whichever is earlier. The fishery will reopen on August 6 and continue 3 days a week (Friday through Sunday) until 4,031 lb (1.8 mt) have been taken and the season is closed by the Commission, or until September 26, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, when halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.), is 153,548 lb (69.6 mt).

(i) The fishing seasons are:

(A) The first season (the “inside 40-fm” fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon “inside 40-fm” fishery (12,284 lb (5.5 mt)) or any in-season revised subquota is estimated

to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 45°46.00′ N. lat., 124°04.49′ W. long.;
(2) 45°44.34′ N. lat., 124°05.09′ W. long.;
(3) 45°40.64′ N. lat., 124°04.90′ W. long.;
(4) 45°33.00′ N. lat., 124°04.46′ W. long.;
(5) 45°32.27′ N. lat., 124°04.74′ W. long.;
(6) 45°29.26′ N. lat., 124°04.22′ W. long.;
(7) 45°20.25′ N. lat., 124°04.67′ W. long.;
(8) 45°19.99′ N. lat., 124°04.62′ W. long.;
(9) 45°17.50′ N. lat., 124°04.91′ W. long.;
(10) 45°11.29′ N. lat., 124°05.20′ W. long.;
(11) 45°05.80′ N. lat., 124°05.40′ W. long.;
(12) 45°05.08′ N. lat., 124°05.93′ W. long.;
(13) 45°03.83′ N. lat., 124°06.47′ W. long.;
(14) 45°01.70′ N. lat., 124°06.53′ W. long.;
(15) 44°58.75′ N. lat., 124°07.14′ W. long.;
(16) 44°51.28′ N. lat., 124°10.21′ W. long.;
(17) 44°49.49′ N. lat., 124°10.90′ W. long.;
(18) 44°44.96′ N. lat., 124°14.39′ W. long.;
(19) 44°43.44′ N. lat., 124°14.78′ W. long.;
(20) 44°42.27′ N. lat., 124°13.81′ W. long.;
(21) 44°41.68′ N. lat., 124°15.38′ W. long.;
(22) 44°34.87′ N. lat., 124°15.80′ W. long.;
(23) 44°33.74′ N. lat., 124°14.44′ W. long.;
(24) 44°27.66′ N. lat., 124°16.99′ W. long.;
(25) 44°19.13′ N. lat., 124°19.22′ W. long.;
(26) 44°15.35′ N. lat., 124°17.38′ W. long.;
(27) 44°14.38′ N. lat., 124°17.78′ W. long.;
(28) 44°12.80′ N. lat., 124°17.18′ W. long.;
(29) 44°09.23′ N. lat., 124°15.96′ W. long.;
(30) 44°08.38′ N. lat., 124°16.79′ W. long.;
(31) 44°08.30′ N. lat., 124°16.75′ W. long.;
(32) 44°01.18′ N. lat., 124°15.42′ W. long.;
(33) 43°51.61′ N. lat., 124°14.68′ W. long.;
(34) 43°42.66′ N. lat., 124°15.46′ W. long.;
(35) 43°40.49′ N. lat., 124°15.74′ W. long.;
(36) 43°38.77′ N. lat., 124°15.64′ W. long.;
(37) 43°34.52′ N. lat., 124°16.73′ W. long.;
(38) 43°28.82′ N. lat., 124°19.52′ W. long.;
(39) 43°23.91′ N. lat., 124°24.28′ W. long.;
(40) 43°20.83′ N. lat., 124°26.63′ W. long.;
(41) 43°17.96′ N. lat., 124°28.81′ W. long.;
(42) 43°16.75′ N. lat., 124°28.42′ W. long.;
(43) 43°13.97′ N. lat., 124°31.99′ W. long.;
(44) 43°13.72′ N. lat., 124°33.25′ W. long.;
(45) 43°12.26′ N. lat., 124°34.16′ W. long.;
(46) 43°10.96′ N. lat., 124°32.33′ W. long.;
(47) 43°05.65′ N. lat., 124°31.52′ W. long.;
(48) 42°59.66′ N. lat., 124°32.58′ W. long.;
(49) 42°54.97′ N. lat., 124°36.99′ W. long.;
(50) 42°53.81′ N. lat., 124°38.57′ W. long.;
(51) 42°50.00′ N. lat., 124°39.68′ W. long.;
(52) 42°49.13′ N. lat., 124°39.70′ W. long.;
(53) 42°46.47′ N. lat., 124°38.89′ W. long.;
(54) 42°45.74′ N. lat., 124°38.86′ W. long.;
(55) 42°44.79′ N. lat., 124°37.96′ W. long.;
(56) 42°45.01′ N. lat., 124°36.39′ W. long.;
(57) 42°44.14′ N. lat., 124°35.17′ W. long.;
(58) 42°42.14′ N. lat., 124°32.82′ W. long.; and
(59) 42°40.50′ N. lat., 124°31.98′ W. long.;

(B) The second season (spring season), which is for the "all-depth" fishery, is open on May 13, 14, 15, 20, 21, 22 and June 3, 4, 5. The projected catch for this season is 105,948 lb (48 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: June 17, 18, 19 and July 1, 2, 3, 15, 16, 17, 29, 30, 31. If NMFS decides in-season to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth" fishery, will be open on August 6, 7, 20, 21, and September 3, 4, 17, 18, and October 1, 2, 15, 16, 29, 30, or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 141,265 lb (64 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 7. If after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning August 13 and ending October 31. If after September 6, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 10, and ending October 30. After September 6 the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod, when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the

40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124°21.80 W. long.;

(4) 44°28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

(f) The area south of Humbug Mountain, Oregon (42°40.50′ N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 5,007 lb (2.2 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

27. Sport Fishing for Halibut—Area 2B

(1) In all waters off British Columbia [8]

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(2) In British Columbia, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(3) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

28. Sport Fishing for Halibut—Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E

(1) In waters in and off Alaska [9]

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person unless a more restrictive bag limit applies in federal regulations at 50 CFR 300.65; and

(c) No person may possess more than two daily bag limits.

(2) In Convention waters in and off Alaska, no person shall possess on board a vessel, including charter vessels and pleasure craft used for fishing, halibut that has been filleted, mutilated, or otherwise disfigured in any manner, except that

(a) Each halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with skin on all pieces; and

(b) Halibut in excess of the possession limit in paragraph (1)(c) of this section may be possessed on a vessel that does not contain sport fishing gear, fishing rods, hand lines, or gaffs.

29. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

BILLING CODE 2010–5892–P

[8] DFO could implement more restrictive regulations for the sport fishery, therefore anglers are advised to check the current federal or provincial regulations prior to fishing.

[9] NMFS could implement more restrictive regulations for the sport fishery or components of it, therefore, anglers are advised to check the current federal or state regulations prior to fishing.

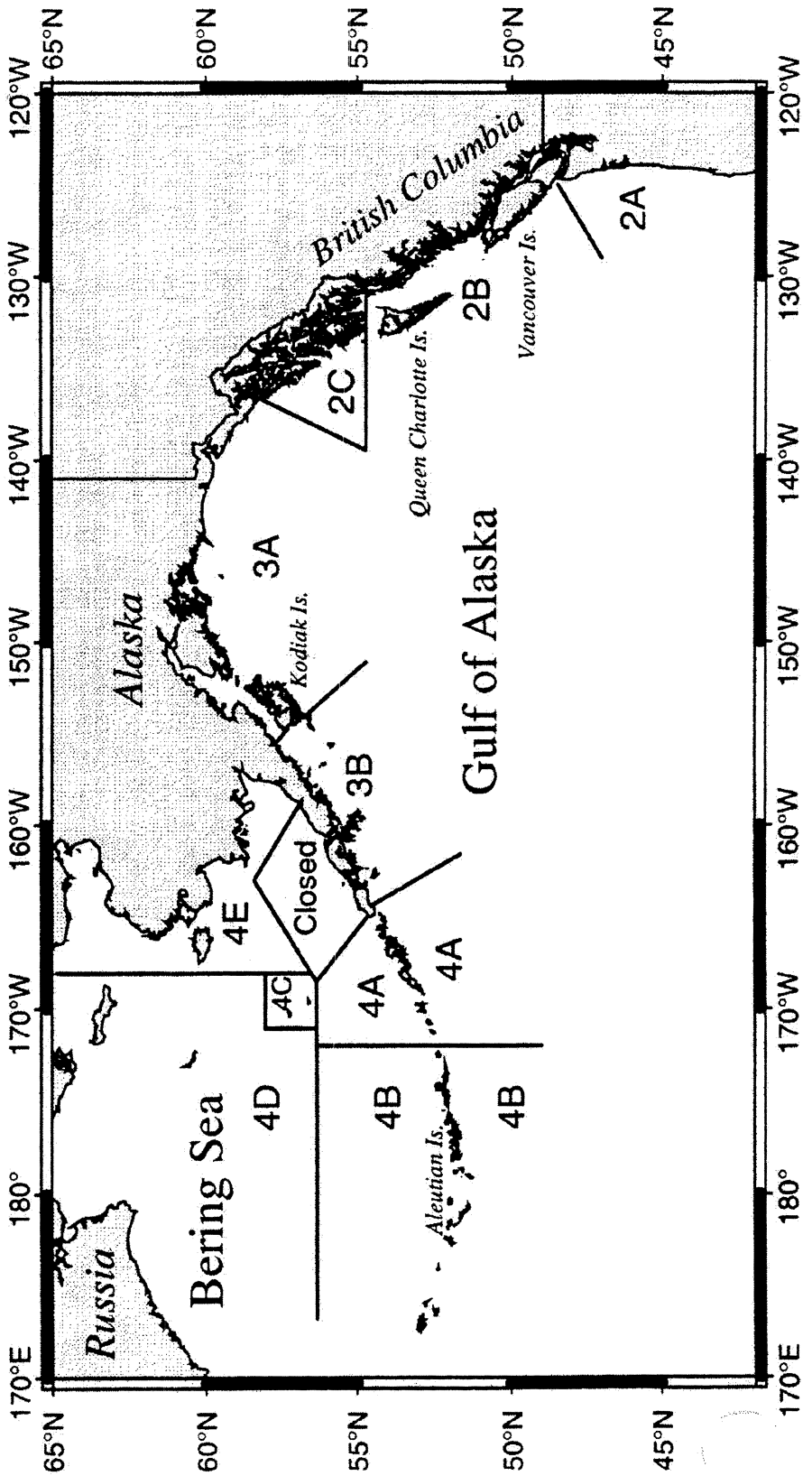


Figure 1. Regulatory areas for the Pacific halibut fishery.

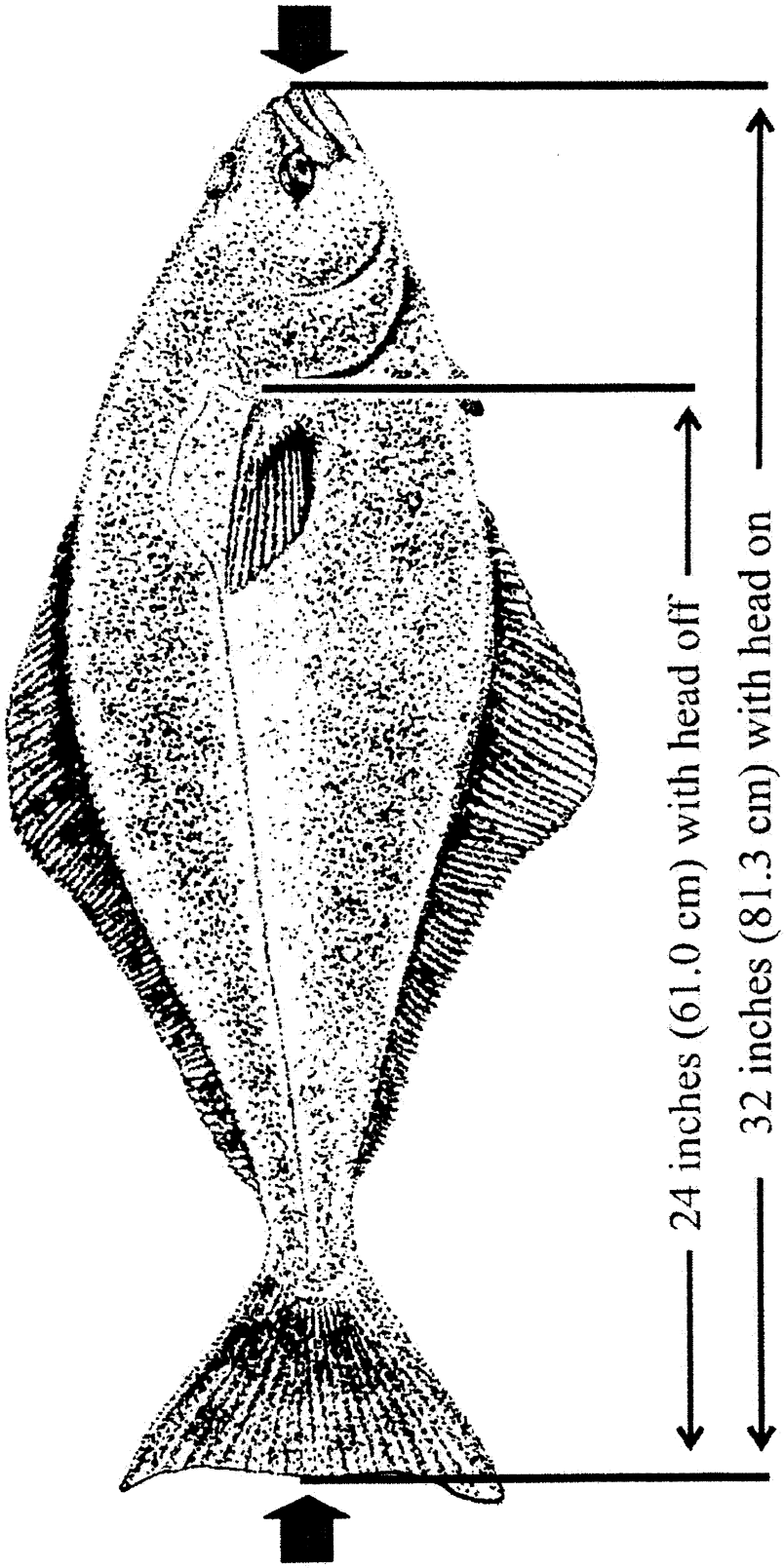


Figure 2. Minimum commercial size.

BILLING CODE 2010–5892–C

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations

governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

IPHC Regulations

These IPHC annual management measures implement an agreement between the United States and Canada and are published in the **Federal Register** to provide notice of their effectiveness and content. The notice-and-comment and delay-in-effectiveness date provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, are inapplicable to IPHC management measures because this regulation involves a foreign affairs function of the United States, 5 U.S.C. 553(a)(1). Furthermore, no other law requires prior notice and public comment for this rule. Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this portion of the rule and none has been prepared.

2010 Area 2A Catch Sharing Plan, Annual Management Measures and Federal Regulations

As explained above in the preamble, the recreational management measures for Area 2A are promulgated through a different process than the process for the IPHC regulations themselves. NMFS proposed these management measures on February 4, 2010 (75 FR 5745).

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) in association with the proposed rule for this action. A final regulatory flexibility analysis (FRFA) incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS responses to those comments, and a summary of the analyses completed to support the action. NMFS received no comments on the IRFA. A copy of the FRFA is available from the NMFS Northwest Region (*see* **ADDRESSES**) and a summary of the FRFA follows:

The main management objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational (sport), and tribal fishery to target halibut in the manner that is appropriate to meet both the conservation requirements for species that co-occur with Pacific halibut and the needs of fishery participants in particular fisheries and fishing areas.

The proposed changes to the Catch Sharing Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, would: (1) Revise openings in the Washington South Coast Subarea and, allow better access to the nearshore quota; (2) Revise the northern and western boundaries of the Washington nearshore area to promote ease of compliance and enforcement; (3) Specify circumstances when retention of lingcod is allowed in the Washington South Coast Subarea; (4) Change the open days in the Oregon Central Coast Subarea "all depth" fishery to extend the season in this area, while not exceeding the quota of the inside 40 fm fishery as happened in 2009.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. The Washington charter boat fleet was estimated at approximately 165 vessels and yielded 15 survey responses. The charterboat vessels associated with the survey responses fished for groundfish including halibut, about 25 percent of their trips, for salmon 60 percent of their trips, and the remaining trips were attributed to tuna fishing or public nature watching trips. Relative to other charterboats, eight of the fifteen respondents were classified as "medium size" vessels and average $131,000 in total sales receipts. The remaining seven respondents were classified as "small" vessels and averaged $20,000 in receipts.

In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could participate in the halibut fishery. Average annual revenues from all types of recreational fishing, whale watching, and other activities ranged from $7,000 for small Oregon vessels to the $131,000 for medium Washington vessels. These data confirm that charterboat vessels qualify as small entities under the Regulatory Flexibility Act.

NOAA Fisheries cannot exempt small entities or change the reporting requirements for small entities. Thus, there are no other alternatives to the rule that minimize the impacts on small entities. The major economic effect on the fishery is from a change in the TAC which is set by international agreement. Given the TAC, the sport management measures implement the plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the plan's objectives. The measures will be very similar to last year's management measures.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of halibut management in Area 2A, NMFS maintains a toll-free telephone hotline where members of the public may call in to receive current information on seasons and requirements to participate in the halibut fisheries in Area 2A. This hotline also serves as small entity compliance guide. Copies of this final rule are available from the NMFS Northwest Regional Office upon request (*see* **ADDRESSES**). To hear the small entity compliance guide associated with this final rule, call the NMFS hotline at 800–662–9825.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The U.S. government formally recognizes that 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal

allocations and regulations, including the changes to the CSP, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Indian fisheries, Reporting and recordkeeping requirements, Treaties.

Dated: March 12, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

■ 2. In § 300.63, paragraphs (e), (f), and (g) are revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(e) *Area 2A Non-Treaty Commercial Fishery Closed Areas.* Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10′ N. lat. Between the U.S./Canada border and 46°16′ N. lat., the eastern boundary of the RCA, is the shoreline. Between 46°16′ N. lat. and 43°00′ N. lat., the RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at § 300.63(f). Between 43°00′ N. lat. and 42°00′ N. lat., the RCA is defined along an eastern boundary by a line approximating the 20-fm (37-m) depth contour. Coordinates for the 20-fm (37-m) boundary are listed at § 660.391(b). Between 42°00′ N. lat. and 40°10′ N. lat., the RCA is defined along an eastern boundary by the 20-fm (37-m) depth contour. Between the U.S./Canada border and 40°10′ N. lat., the RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at § 300.63(g).

(f) The 30-fm (55-m) depth contour between the U.S. border with Canada and 40°10.00′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 48°24.79′ N. lat., 124°44.07′ W. long.;
(2) 48°24.80′ N. lat., 124°44.74′ W. long.;
(3) 48°23.94′ N. lat., 124°44.70′ W. long.;
(4) 48°23.51′ N. lat., 124°45.01′ W. long.;
(5) 48°22.59′ N. lat., 124°44.97′ W. long.;
(6) 48°21.75′ N. lat., 124°45.26′ W. long.;
(7) 48°21.23′ N. lat., 124°47.78′ W. long.;
(8) 48°20.32′ N. lat., 124°49.53′ W. long.;
(9) 48°16.72′ N. lat., 124°51.58′ W. long.;
(10) 48°10.00′ N. lat., 124°52.58′ W. long.;
(11) 48°05.63′ N. lat., 124°52.91′ W. long.;
(12) 47°53.37′ N. lat., 124°47.37′ W. long.;
(13) 47°40.28′ N. lat., 124°40.07′ W. long.;
(14) 47°31.70′ N. lat., 124°37.03′ W. long.;
(15) 47°25.67′ N. lat., 124°34.79′ W. long.;
(16) 47°12.82′ N. lat., 124°29.12′ W. long.;
(17) 46°52.94′ N. lat., 124°22.58′ W. long.;
(18) 46°44.18′ N. lat., 124°18.00′ W. long.;
(19) 46°38.17′ N. lat., 124°15.88′ W. long.;
(20) 46°29.53′ N. lat., 124°15.89′ W. long.;
(21) 46°19.27′ N. lat., 124°14.15′ W. long.;
(22) 46°16.00′ N. lat., 124°13.04′ W. long.;
(23) 46°07.00′ N. lat., 124°07.01′ W. long.;
(24) 45°55.95′ N. lat., 124°02.23′ W. long.;
(25) 45°54.53′ N. lat., 124°02.57′ W. long.;
(26) 45°50.65′ N. lat., 124°01.62′ W. long.;
(27) 45°48.20′ N. lat., 124°02.16′ W. long.;
(28) 45°46.00′ N. lat., 124°01.86′ W. long.;
(29) 45°43.46′ N. lat., 124°01.28′ W. long.;
(30) 45°40.48′ N. lat., 124°01.03′ W. long.;
(31) 45°39.04′ N. lat., 124°01.68′ W. long.;
(32) 45°35.48′ N. lat., 124°01.90′ W. long.;
(33) 45°29.81′ N. lat., 124°02.45′ W. long.;
(34) 45°27.97′ N. lat., 124°01.90′ W. long.;
(35) 45°27.22′ N. lat., 124°02.66′ W. long.;
(36) 45°24.20′ N. lat., 124°02.94′ W. long.;
(37) 45°20.60′ N. lat., 124°01.74′ W. long.;
(38) 45°20.25′ N. lat., 124°01.85′ W. long.;
(39) 45°16.44′ N. lat., 124°03.22′ W. long.;
(40) 45°13.63′ N. lat., 124°02.69′ W. long.;
(41) 45°11.05′ N. lat., 124°03.59′ W. long.;
(42) 45°08.55′ N. lat., 124°03.47′ W. long.;
(43) 45°03.82′ N. lat., 124°04.43′ W. long.;
(44) 45°02.81′ N. lat., 124°04.64′ W. long.;
(45) 44°58.06′ N. lat., 124°05.03′ W. long.;
(46) 44°53.97′ N. lat., 124°06.92′ W. long.;
(47) 44°48.89′ N. lat., 124°07.04′ W. long.;
(48) 44°46.94′ N. lat., 124°08.25′ W. long.;
(49) 44°42.72′ N. lat., 124°08.98′ W. long.;
(50) 44°38.16′ N. lat., 124°11.48′ W. long.;
(51) 44°33.38′ N. lat., 124°11.54′ W. long.;
(52) 44°28.51′ N. lat., 124°12.04′ W. long.;
(53) 44°27.65′ N. lat., 124°12.56′ W. long.;
(54) 44°19.67′ N. lat., 124°12.37′ W. long.;
(55) 44°10.79′ N. lat., 124°12.22′ W. long.;
(56) 44°09.22′ N. lat., 124°12.28′ W. long.;
(57) 44°08.30′ N. lat., 124°12.30′ W. long.;
(58) 44°00.22′ N. lat., 124°12.80′ W. long.;
(59) 43°51.56′ N. lat., 124°13.18′ W. long.;
(60) 43°44.26′ N. lat., 124°14.50′ W. long.;
(61) 43°33.82′ N. lat., 124°16.28′ W. long.;
(62) 43°28.66′ N. lat., 124°18.72′ W. long.;
(63) 43°23.12′ N. lat., 124°24.04′ W. long.;
(64) 43°20.83′ N. lat., 124°25.67′ W. long.;
(65) 43°20.48′ N. lat., 124°25.90′ W. long.;
(66) 43°16.41′ N. lat., 124°27.52′ W. long.;
(67) 43°14.23′ N. lat., 124°29.28′ W. long.;
(68) 43°14.03′ N. lat., 124°28.31′ W. long.;
(69) 43°11.92′ N. lat., 124°28.26′ W. long.;

(70) 43°11.02′ N. lat., 124°29.11′ W. long.;
(71) 43°10.13′ N. lat., 124°29.15′ W. long.;
(72) 43°09.26′ N. lat., 124°31.03′ W. long.;
(73) 43°07.73′ N. lat., 124°30.92′ W. long.;
(74) 43°05.93′ N. lat., 124°29.64′ W. long.;
(75) 43°01.59′ N. lat., 124°30.64′ W. long.;
(76) 42°59.72′ N. lat., 124°31.16′ W. long.;
(77) 42°53.75′ N. lat., 124°36.09′ W. long.;
(78) 42°50.00′ N. lat., 124°36.41′ W. long.;
(79) 42°50.00′ N. lat., 124°38.39′ W. long.;
(80) 42°49.37′ N. lat., 124°38.81′ W. long.;
(81) 42°46.42′ N. lat., 124°37.69′ W. long.;
(82) 42°46.07′ N. lat., 124°38.56′ W. long.;
(83) 42°45.29′ N. lat., 124°37.95′ W. long.;
(84) 42°45.61′ N. lat., 124°36.87′ W. long.;
(85) 42°44.27′ N. lat., 124°33.64′ W. long.;
(86) 42°42.75′ N. lat., 124°31.84′ W. long.;
(87) 42°40.50′ N. lat., 124°29.67′ W. long.;
(88) 42°40.04′ N. lat., 124°29.20′ W. long.;
(89) 42°38.09′ N. lat., 124°28.39′ W. long.;
(90) 42°36.73′ N. lat., 124°27.54′ W. long.;
(91) 42°36.56′ N. lat., 124°28.40′ W. long.;
(92) 42°35.77′ N. lat., 124°28.79′ W. long.;
(93) 42°34.03′ N. lat., 124°29.98′ W. long.;
(94) 42°34.19′ N. lat., 124°30.58′ W. long.;
(95) 42°31.27′ N. lat., 124°32.24′ W. long.;
(96) 42°27.07′ N. lat., 124°32.53′ W. long.;
(97) 42°24.21′ N. lat., 124°31.23′ W. long.;
(98) 42°20.47′ N. lat., 124°28.87′ W. long.;
(99) 42°14.60′ N. lat., 124°26.80′ W. long.;
(100) 42°13.67′ N. lat., 124°26.25′ W. long.;
(101) 42°10.90′ N. lat., 124°24.56′ W. long.;
(102) 42°07.04′ N. lat., 124°23.35′ W. long.;
(103) 42°02.16′ N. lat., 124°22.59′ W. long.;
(104) 42°00.00′ N. lat., 124°21.81′ W. long.;
(105) 41°55.75′ N. lat., 124°20.72′ W. long.;
(106) 41°50.93′ N. lat., 124°23.76′ W. long.;
(107) 41°42.53′ N. lat., 124°16.47′ W. long.;
(108) 41°37.20′ N. lat., 124°17.05′ W. long.;
(109) 41°24.58′ N. lat., 124°10.51′ W. long.;
(110) 41°20.73′ N. lat., 124°11.73′ W. long.;
(111) 41°17.59′ N. lat., 124°10.66′ W. long.;
(112) 41°04.54′ N. lat., 124°14.47′ W. long.;
(113) 40°54.26′ N. lat., 124°13.90′ W. long.;
(114) 40°40.31′ N. lat., 124°26.24′ W. long.;
(115) 40°34.00′ N. lat., 124°27.39′ W. long.;
(116) 40°30.00′ N. lat., 124°31.32′ W. long.;
(117) 40°28.89′ N. lat., 124°32.43′ W. long.;
(118) 40°24.77′ N. lat., 124°29.51′ W. long.;
(119) 40°22.47′ N. lat., 124°24.12′ W. long.;
(120) 40°19.73′ N. lat., 124°23.59′ W. long.;
(121) 40°18.64′ N. lat., 124°21.89′ W. long.;
(122) 40°17.67′ N. lat., 124°23.07′ W. long.;
(123) 40°15.58′ N. lat., 124°23.61′ W. long.;
(124) 40°13.42′ N. lat., 124°22.94′ W. long.;
(125) 40°10.00′ N. lat., 124°16.65′ W. long.

(g) The 100-fm (183-m) depth contour used between the U.S. border with Canada and 40°10.00′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 48°15.00′ N. lat., 125°41.00′ W. long.;
(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;
(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.80′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.67′ N. lat., 125°13.70′ W. long.;
(22) 48°19.70′ N. lat., 125°11.13′ W. long.;
(23) 48°22.95′ N. lat., 125°10.79′ W. long.;
(24) 48°21.61′ N. lat., 125°02.54′ W. long.;
(25) 48°23.00′ N. lat., 124°49.34′ W. long.;
(26) 48°17.00′ N. lat., 124°56.50′ W. long.;
(27) 48°06.00′ N. lat., 125°00.00′ W. long.;
(28) 48°04.62′ N. lat., 125°01.73′ W. long.;
(29) 48°04.84′ N. lat., 125°04.03′ W. long.;
(30) 48°06.41′ N. lat., 125°06.51′ W. long.;
(31) 48°06.00′ N. lat., 125°08.00′ W. long.;
(32) 48°07.08′ N. lat., 125°09.34′ W. long.;
(33) 48°07.28′ N. lat., 125°11.14′ W. long.;
(34) 48°03.45′ N. lat., 125°16.66′ W. long.;
(35) 48°02.35′ N. lat., 125°17.30′ W. long.;
(36) 48°02.35′ N. lat., 125°18.07′ W. long.;
(37) 48°00.00′ N. lat., 125°19.30′ W. long.;
(38) 47°59.50′ N. lat., 125°18.88′ W. long.;
(39) 47°58.68′ N. lat., 125°16.19′ W. long.;
(40) 47°56.62′ N. lat., 125°13.50′ W. long.;
(41) 47°53.71′ N. lat., 125°11.96′ W. long.;
(42) 47°51.70′ N. lat., 125°09.38′ W. long.;
(43) 47°49.95′ N. lat., 125°06.07′ W. long.;
(44) 47°49.00′ N. lat., 125°03.00′ W. long.;
(45) 47°46.95′ N. lat., 125°04.00′ W. long.;
(46) 47°46.58′ N. lat., 125°03.15′ W. long.;

(47) 47°44.07′ N. lat., 125°04.28′ W. long.;
(48) 47°43.32′ N. lat., 125°04.41′ W. long.;
(49) 47°40.95′ N. lat., 125°04.14′ W. long.;
(50) 47°39.58′ N. lat., 125°04.97′ W. long.;
(51) 47°36.23′ N. lat., 125°02.77′ W. long.;
(52) 47°34.28′ N. lat., 124°58.66′ W. long.;
(53) 47°32.17′ N. lat., 124°57.77′ W. long.;
(54) 47°30.27′ N. lat., 124°56.16′ W. long.;
(55) 47°30.60′ N. lat., 124°54.80′ W. long.;
(56) 47°29.26′ N. lat., 124°52.21′ W. long.;
(57) 47°28.21′ N. lat., 124°50.65′ W. long.;
(58) 47°27.38′ N. lat., 124°49.34′ W. long.;
(59) 47°25.61′ N. lat., 124°48.26′ W. long.;
(60) 47°23.54′ N. lat., 124°46.42′ W. long.;
(61) 47°20.64′ N. lat., 124°45.91′ W. long.;
(62) 47°17.99′ N. lat., 124°45.59′ W. long.;
(63) 47°18.20′ N. lat., 124°49.12′ W. long.;
(64) 47°15.01′ N. lat., 124°51.09′ W. long.;
(65) 47°12.61′ N. lat., 124°54.89′ W. long.;
(66) 47°08.22′ N. lat., 124°56.53′ W. long.;
(67) 47°08.50′ N. lat., 124°57.74′ W. long.;
(68) 47°01.92′ N. lat., 124°54.95′ W. long.;
(69) 47°01.08′ N. lat., 124°59.22′ W. long.;
(70) 46°58.48′ N. lat., 124°57.81′ W. long.;
(71) 46°56.79′ N. lat., 124°56.03′ W. long.;
(72) 46°58.01′ N. lat., 124°55.09′ W. long.;
(73) 46°55.07′ N. lat., 124°54.14′ W. long.;
(74) 46°59.60′ N. lat., 124°49.79′ W. long.;
(75) 46°58.72′ N. lat., 124°48.78′ W. long.;
(76) 46°54.45′ N. lat., 124°48.36′ W. long.;
(77) 46°53.99′ N. lat., 124°49.95′ W. long.;
(78) 46°54.38′ N. lat., 124°52.73′ W. long.;
(79) 46°52.38′ N. lat., 124°52.02′ W. long.;
(80) 46°48.93′ N. lat., 124°49.17′ W. long.;
(81) 46°41.50′ N. lat., 124°43.00′ W. long.;
(82) 46°34.50′ N. lat., 124°28.50′ W. long.;
(83) 46°29.00′ N. lat., 124°30.00′ W. long.;
(84) 46°20.00′ N. lat., 124°36.50′ W. long.;
(85) 46°18.40′ N. lat., 124°37.70′ W. long.;
(86) 46°18.03′ N. lat., 124°35.46′ W. long.;
(87) 46°17.00′ N. lat., 124°22.50′ W. long.;
(88) 46°16.00′ N. lat., 124°20.62′ W. long.;
(89) 46°13.52′ N. lat., 124°25.49′ W. long.;
(90) 46°12.17′ N. lat., 124°30.74′ W. long.;
(91) 46°10.63′ N. lat., 124°37.96′ W. long.;
(92) 46°09.29′ N. lat., 124°39.01′ W. long.;
(93) 46°02.40′ N. lat., 124°40.37′ W. long.;
(94) 45°56.45′ N. lat., 124°38.00′ W. long.;
(95) 45°51.92′ N. lat., 124°38.50′ W. long.;
(96) 45°47.20′ N. lat., 124°35.58′ W. long.;
(97) 45°46.40′ N. lat., 124°32.36′ W. long.;
(98) 45°46.00′ N. lat., 124°32.10′ W. long.;
(99) 45°41.75′ N. lat., 124°28.12′ W. long.;
(100) 45°36.95′ N. lat., 124°24.47′ W. long.;
(101) 45°31.84′ N. lat., 124°22.04′ W. long.;
(102) 45°27.10′ N. lat., 124°21.74′ W. long.;
(103) 45°20.25′ N. lat., 124°18.54′ W. long.;
(104) 45°18.14′ N. lat., 124°17.59′ W. long.;
(105) 45°11.08′ N. lat., 124°16.97′ W. long.;
(106) 45°04.39′ N. lat., 124°18.35′ W. long.;
(107) 45°03.83′ N. lat., 124°18.60′ W. long.;
(108) 44°58.05′ N. lat., 124°21.58′ W. long.;
(109) 44°47.67′ N. lat., 124°31.41′ W. long.;
(110) 44°44.54′ N. lat., 124°33.58′ W. long.;
(111) 44°39.88′ N. lat., 124°35.00′ W. long.;
(112) 44°32.90′ N. lat., 124°36.81′ W. long.;
(113) 44°30.34′ N. lat., 124°38.56′ W. long.;
(114) 44°30.04′ N. lat., 124°42.31′ W. long.;
(115) 44°26.84′ N. lat., 124°44.91′ W. long.;
(116) 44°17.99′ N. lat., 124°51.04′ W. long.;
(117) 44°12.92′ N. lat., 124°56.28′ W. long.;
(118) 44°00.14′ N. lat., 124°55.25′ W. long.;
(119) 43°57.68′ N. lat., 124°55.48′ W. long.;
(120) 43°56.66′ N. lat., 124°55.45′ W. long.;
(121) 43°56.47′ N. lat., 124°34.61′ W. long.;
(122) 43°42.73′ N. lat., 124°32.41′ W. long.;
(123) 43°30.92′ N. lat., 124°34.43′ W. long.;
(124) 43°20.83′ N. lat., 124°39.39′ W. long.;
(125) 43°17.45′ N. lat., 124°41.16′ W. long.;
(126) 43°07.04′ N. lat., 124°41.25′ W. long.;
(127) 43°03.45′ N. lat., 124°44.36′ W. long.;
(128) 43°03.91′ N. lat., 124°50.81′ W. long.;
(129) 42°55.70′ N. lat., 124°52.79′ W. long.;
(130) 42°54.12′ N. lat., 124°47.36′ W. long.;
(131) 42°50.00′ N. lat., 124°45.33′ W. long.;
(132) 42°44.00′ N. lat., 124°42.38′ W. long.;
(133) 42°40.50′ N. lat., 124°41.71′ W. long.;
(134) 42°38.23′ N. lat., 124°41.25′ W. long.;
(135) 42°33.02′ N. lat., 124°42.38′ W. long.;
(136) 42°31.90′ N. lat., 124°42.04′ W. long.;
(137) 42°30.08′ N. lat., 124°42.67′ W. long.;
(138) 42°28.28′ N. lat., 124°47.08′ W. long.;
(139) 42°25.22′ N. lat., 124°43.51′ W. long.;
(140) 42°19.23′ N. lat., 124°37.91′ W. long.;
(141) 42°16.29′ N. lat., 124°36.11′ W. long.;
(142) 42°13.67′ N. lat., 124°35.81′ W. long.;
(143) 42°05.66′ N. lat., 124°34.92′ W. long.;
(144) 42°00.00′ N. lat., 124°35.27′ W. long.;
(145) 41°47.04′ N. lat., 124°27.64′ W. long.;
(146) 41°32.92′ N. lat., 124°28.79′ W. long.;
(147) 41°24.17′ N. lat., 124°28.46′ W. long.;
(148) 41°10.12′ N. lat., 124°20.50′ W. long.;
(149) 40°51.41′ N. lat., 124°24.38′ W. long.;
(150) 40°43.71′ N. lat., 124°29.89′ W. long.;
(151) 40°40.14′ N. lat., 124°30.90′ W. long.;

(152) 40°37.35′ N. lat., 124°29.05′ W. long.;
(153) 40°34.76′ N. lat., 124°29.82′ W. long.;
(154) 40°36.78′ N. lat., 124°37.06′ W. long.;
(155) 40°32.44′ N. lat., 124°39.58′ W. long.;
(156) 40°30.00′ N. lat., 124°38.13′ W. long.;
(157) 40°24.82′ N. lat., 124°35.12′ W. long.;
(158) 40°23.30′ N. lat., 124°31.60′ W. long.;
(159) 40°23.52′ N. lat., 124°28.78′ W. long.;
(160) 40°22.43′ N. lat., 124°25.00′ W. long.;
(161) 40°21.72′ N. lat., 124°24.94′ W. long.;
(162) 40°21.87′ N. lat., 124°27.96′ W. long.;
(163) 40°21.40′ N. lat., 124°28.74′ W. long.;
(164) 40°19.68′ N. lat., 124°28.49′ W. long.;
(165) 40°17.73′ N. lat., 124°25.43′ W. long.;
(166) 40°18.37′ N. lat., 124°23.35′ W. long.;
(167) 40°15.75′ N. lat., 124°26.05′ W. long.;
(168) 40°16.75′ N. lat., 124°33.71′ W. long.;
(169) 40°16.29′ N. lat., 124°34.36′ W. long.; and
(170) 40°10.00′ N. lat., 124°21.12′ W. long.

* * * * *

[FR Doc. 2010–5892 Filed 3–15–10; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 52
Thursday, March 18, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0026; Directorate Identifier 2010–NE–03–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–5, –5B, and –7B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for CFM International, S.A. CFM56–5, –5B, and –7B series turbofan engines. This proposed AD would require removing from service, nine stage 3 low-pressure turbine (LPT) disks, identified by serial number (S/N). This proposed AD results from the discovery of a material nonconformity requiring removal of the disk before the certified disk life of certain stage 3 LPT disks. We are proposing this AD to prevent uncontained failure of the stage 3 LPT disk and damage to the airplane.

DATES: We must receive any comments on this proposed AD by May 17, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

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

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *antonio.cancelliere@faa.gov;* telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0026; Directorate Identifier 2010–NE–03–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

In February 2009, we were made aware by CFM International, S.A. of stage 3 LPT disks, part number (P/N) 336–002–006–0, S/Ns DE255844, DE256388, DE256622, DE256623, DE256625, DE256627, DE256628, DE256631, and DE256637, being suspect of material non-conformity. This batch of parts was subject to a quality problem during manufacturing. CFM International, S.A. states that the manufacturing process has since been revised to eliminate the quality problem. The non-conformity requires removal from service of the suspect disks before their certified life limits. Operating engines with these affected disks to the certified life limit could result in uncontained failure of the stage 3 LPT disk and damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. This proposed AD would require removing from service any affected stage 3 LPT disks from engines before their certified life limit. We are proposing this AD, which would require removing the affected stage 3 LPT disks from service before accumulating 9,500 cycles-since-new.

Costs of Compliance

We estimate that this proposed AD would affect two engines installed on airplanes of U.S. registry. The pro-rated cost of the replacement parts is $40,375 per engine. We estimate that no additional labor costs would be incurred to perform the required disk removals, because the removals would be done at time of engine shop visit. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $80,750.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed 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. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

CFM International, S.A.: Docket No. FAA–2010–0026; Directorate Identifier 2010–NE–03–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFM International CFM56–5, –5B, and –7B series turbofan engines with stage 3 low-pressure turbine (LPT) disks installed with the following serial numbers, (S/Ns) DE255844, DE256388, DE256622, DE256623, DE256625, DE256627, DE256628, DE256631, and DE256637. The –5 and –5B series engines are installed on, but not limited to, Airbus A318, A319, A320, A321, and A340 airplanes, and the –7B series engines are installed on, but not limited to, Boeing 737 series airplanes.

Unsafe Condition

(d) This AD results from the discovery of a material nonconformity requiring removal of the disk before the certified disk life of certain stage 3 LPT disks. We are issuing this AD to prevent uncontained failure of the stage 3 LPT disk and damage to the airplane.

Compliance

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

Removal of Affected Stage 3 LPT Disks From Service

(f) Before accumulating 9,500 cycles-since-new, remove stage 3 LPT disks from service.

(g) After the effective date of this AD do not reinstall any stage 3 LPT disk removed from service per paragraph (f) of this AD into any engine.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Contact Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *antonio.cancelliere@faa.gov;* telephone (781) 238–7751; fax (781) 238–7199, for more information about this AD.

(j) CFM International, S.A. Service Bulletin (SB) No. CFM56–5B S/B 72–0733, dated October 26, 2009, and SB No. CFM56–7B S/B 72–0743, dated October 26, 2009, pertain to the subject of this AD. Contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816, for a copy of this service information.

Issued in Burlington, Massachusetts, on March 11, 2010.

Peter A. White,

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

[FR Doc. 2010–5861 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0232; Directorate Identifier 2009–NM–032–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–200C, –200F, –400, –400D, and –400F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 747–200C, –200F, –400, –400D, and –400F series airplanes. The existing AD currently requires repetitive inspections for cracks in the overlapping (upper) skin, upper fastener row of the lap joints of the fuselage skin in sections 41, 42, and 46; and related investigative and corrective actions, if necessary. This proposed AD would expand the inspection area in the existing AD, and add a modification of certain lap joints and certain post-repair inspections of the lap joints. Accomplishing the modification would end the repetitive inspections required by the existing AD for the length of lap joint that is modified. This proposed AD results from a structural review of affected skin lap joints for widespread fatigue damage. We are proposing this AD to prevent fatigue cracking in certain lap joints, which could result in rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by May 3, 2010.

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

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

For service information identified in this proposed AD, contact Boeing

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0232; Directorate Identifier 2009–NM–032–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On February 27, 2006, we issued AD 2006–05–09, amendment 39–14506 (71 FR 12122, March 9, 2006), for certain Model 747–200C, –200F, –400, –400D, and –400F series airplanes. That AD requires repetitive inspections for cracks in the overlapping (upper) skin, upper fastener row of the lap joints of the fuselage skin in sections 41, 42, and 46; and related investigative and corrective actions, if necessary. That AD resulted from fatigue tests and an analysis that identified areas of the fuselage lap joints where fatigue cracks can occur. We issued that AD to detect and correct fatigue cracks in the overlapping (upper) skin, upper fastener row of the lap joints of the fuselage skin in sections 41, 42, and 46, which could adversely affect the structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2006–05–09, the manufacturer has conducted a structural review of affected skin lap joints for widespread fatigue damage, and has identified additional necessary inspection and modification actions. It is recommended that all lap joints with an upper skin thickness of 0.09 inch or less should be inspected; therefore, the inspection area has been expanded to include a new Area 2 (*i.e.,* the lap joint at STA 450, S–0 to S1L and the S–4L lap joint between STA 1970 and STA 2000). It is also recommended that lap joints in sections 41 and 42 with an upper skin thickness of 0.071 inch or less should be modified; and post-repair inspections have been identified.

Revised Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008. That service bulletin describes procedures for repetitive external surface high frequency eddy current (HFEC), external low frequency eddy current (LFEC), and internal LFEC inspections for cracks in the overlapping (upper) skin, upper fastener row of the lap joints of the fuselage skin in sections 41, 42, and 46; and related investigative and corrective actions, if necessary.

For airplanes on which any crack is found, the related investigative actions include open-hole HFEC inspections of the fastener holes to find further cracking. The corrective actions include repairing any cracked lap joint and an open-hole HFEC inspection of the skin at all existing fastener locations common to the repair. The corrective actions also include repairing any crack found during accomplishment of the inspections.

That service bulletin also describes a modification of the lap joints in sections 41 and 42. The modification includes fabricating and installing skin doublers on affected lap joints.

The compliance time for accomplishing the new Area 2 inspections is before the accumulation of 22,000 total flight cycles, or within 3,000 flight cycles after the last HFEC inspection of that area, as specified in the Boeing Model 747 Supplemental Structural Inspection Document, or within 1,000 flight cycles from the date on Revision 1 of the service bulletin; whichever occurs latest.

For areas on which a lap joint repair was installed and the repair doubler is greater than or equal to 40 inches long, that service bulletin describes procedures for repetitive internal surface HFEC inspections of certain doublers of the lap joints for cracks. The compliance time for accomplishing the inspections is within 15,000 flight cycles after the repair was installed.

That service bulletin specifies repeating the applicable inspection every 3,000 flight cycles, or every 1,500 flight cycles for airplanes that have accumulated 30,000 total flight cycles or more.

The compliance time for accomplishing the new lap joint modification is before the accumulation of 30,000 total flight cycles, or within 3,000 flight cycles from the date of Revision 1 of the service bulletin, whichever is later. Accomplishing this modification eliminates the need for the repetitive inspections for the length of lap joint that is modified.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–05–09 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously.

Explanation of Change Made to This Proposed AD

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces the previous designation as a Delegation Option Authorization (DOA) holder. We have revised paragraph (n)(3) of this proposed AD to add delegation of authority to Boeing Commercial Airplanes ODA to approve an alternative method of compliance for any repair required by this AD.

Change to Existing AD

This proposed AD would retain all requirements of AD 2006–05–09. Since AD 2006–05–09 was issued, we have

added a new paragraph to include the ATA code. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2006–05–09	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)
paragraph (g)	paragraph (h)
paragraph (h)	paragraph (l)

Costs of Compliance

There are about 735 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 96 airplanes of U.S. registry.

The actions that are required by AD 2006–05–09 and retained in this proposed AD take about 541 work hours per airplane, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $45,985 per airplane, per inspection cycle.

The new proposed Area 2 inspections would take about 124 work hours per airplane, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the new inspections specified in this proposed AD for U.S. operators is $1,011,880, or $10,540 per airplane, per inspection cycle.

The new proposed modification would take about 4,799 work hours per airplane, at an average labor rate of $85 per work hour. Required parts costs per airplane would be minimal. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $39,159,840, or $407,915 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–14506 (71 FR 12122, March 9, 2006) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0232; Directorate Identifier 2009–NM–032–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 3, 2010.

Affected ADs

(b) This AD supersedes AD 2006–05–09.

Applicability

(c) This AD applies to The Boeing Company Model 747–200C, –200F, –400, –400D, and –400F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from a structural review of affected skin lap joints for widespread fatigue damage. The Federal Aviation Administration is issuing this AD to prevent fatigue cracking in certain lap joints, which could result in rapid depressurization 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.

Restatement of Requirements of AD 2006–05–09, With Revised Service Information

Initial Inspections and Related Investigative and Corrective Actions

(g) For airplanes identified in Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005: At the applicable time specified in Table 1 of this AD, do an external surface high frequency eddy current (HFEC), external low frequency eddy current (LFEC), and internal LFEC inspection, as applicable, for cracks in the overlapping (upper) skin, upper fastener row of the lap joints of the fuselage skin in sections 41, 42, and 46, and any applicable related investigative and corrective actions by doing all of the actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005; or Revision 1, dated October 30, 2008. Do any applicable related investigative and corrective actions before further flight. As of the effective date of this AD, only Revision 1, dated October 30, 2008, of Boeing Alert Service Bulletin 747–53A2499 may be used.

TABLE 1—INITIAL COMPLIANCE TIME

For airplanes on which Structural Significant Items (SSIs) F–25G, F–25H, and F–25I—	Inspect—
(1) Have not been inspected in accordance with paragraph (i) of AD 2004–07–22 R1, amendment 39–15326, using the HFEC method.	Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after April 13, 2006 (the effective date of AD 2006–05–09), whichever occurs later.
(2) Have been inspected in accordance with paragraph (i) of AD 2004–07–22 R1, using the HFEC method.	Within 3,000 flight cycles after the most recent supplemental structural inspection document (SSID) inspection of each applicable structural significant item (as given in Boeing Document D6–35022, "SSID for Model 747 Airplanes," Revision G, dated December 2000), or within 1,000 flight cycles after April 13, 2006, whichever occurs later.

Repetitive Inspections

(h) Repeat the applicable inspections required by paragraph (g) of this AD thereafter at intervals not to exceed those specified in paragraph 1.E., "Compliance," (including the note) of Boeing Alert Service Bulletin 747–53A2499, dated August 11, 2005; or Revision 1, dated October 30, 2008. As of the effective date of this AD, only Revision 1, dated October 30, 2008, of Boeing Alert Service Bulletin 747–53A2499 may be used.

New Requirements of This AD

Repetitive Inspections/Investigative and Corrective Actions

(i) *For all airplanes:* Do an external HFEC inspection of the lap joints in Sections 41, 42, and 46 for cracks, by doing all the actions, including all applicable related investigative and corrective actions, specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008. Do the inspection at the applicable time specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008; except as required by paragraph (m) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraphs (g) and (h) of this AD.

(j) For areas on which a lap joint repair was installed and the repair doubler is greater than or equal to 40 inches long: Do initial and repetitive internal HFEC inspections for cracks by doing all the actions, including all applicable corrective actions, specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, except as required by paragraph (l) of this AD. Do the inspections and corrective actions at the times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, except as required by paragraph (m) of this AD.

Terminating Action

(k) Modify the applicable lap joints in sections 41 and 42 by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, at the time specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008; except as required by paragraphs (l) and (m) of this AD. Accomplishing this modification terminates the repetitive inspections of the skin lap joints in sections 41 and 42 required by paragraphs (i) and (j) of this AD for the length of lap joint that is modified.

Exceptions to Service Bulletin Procedures

(l) Where Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, specifies to contact Boeing for appropriate action, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(m) Where Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, specifies a compliance time after the date of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) AMOCS approved previously in accordance with AD 2006–05–09 are approved as alternative methods of compliance with the corresponding requirements of this AD.

Issued in Renton, Washington, on March 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5940 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0049; Airspace Docket No. 08–AWA–1]

RIN 2120–AA66

Proposed Modification of Class B Airspace; Charlotte, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

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

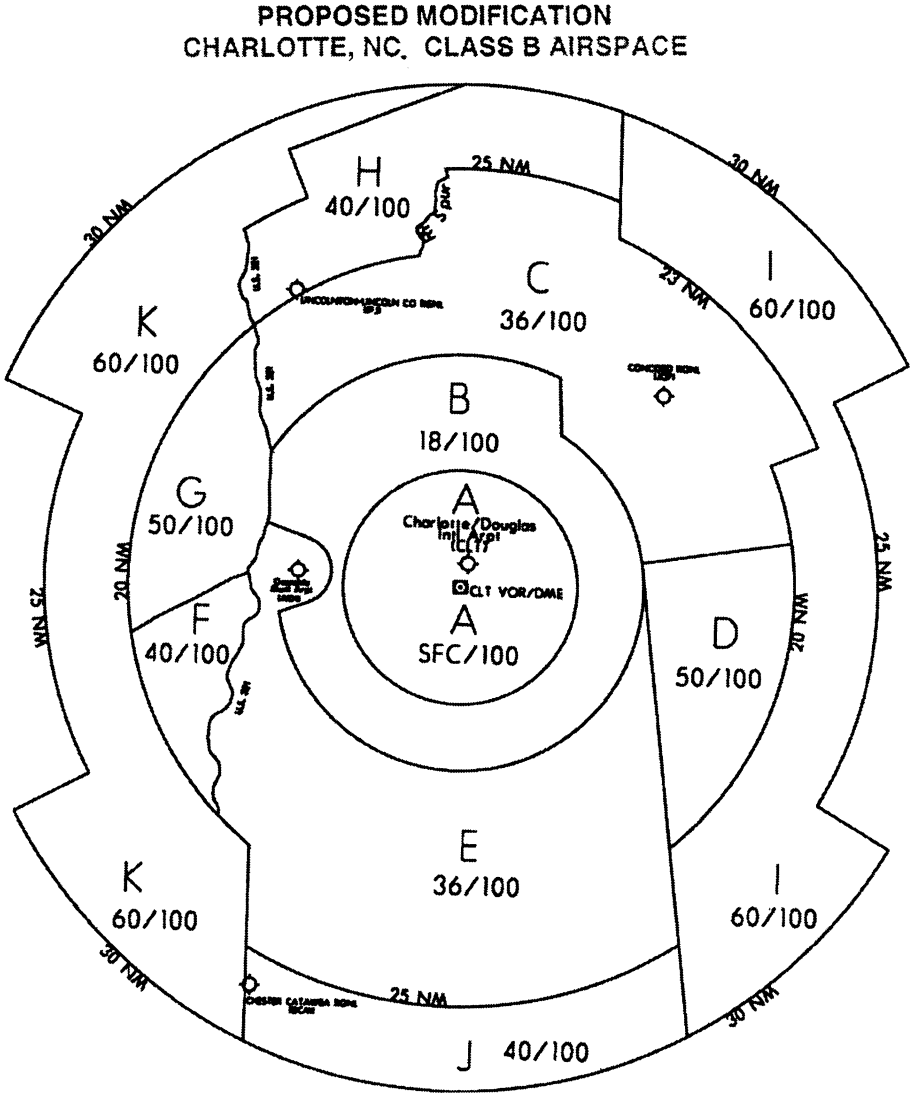
SUMMARY: This action provides the graphic chart for the proposed rule published in the **Federal Register** of March 3, 2010, regarding the modification of Class B airspace, Charlotte, NC. This correction adds the chart that was inadvertently omitted from the NPRM.

DATES: Comments must be received on or before May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

Correction

In proposed rule FR Doc. 2010–4377, beginning on page 9538 in the issue of March 3, 2010, make the following correction: On page 9544 in the first column, add the attached graphic chart before the Issue Date line.



Issued in Washington, DC, on March 9, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–5879 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 100216090–0123–01]

RIN 0648–AY66

Regulations to Amend the Civil Procedures

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: This rule amends the procedures governing NOAA's administrative proceedings for the assessment of civil penalties; suspension, revocation, modification, or denial of permits; issuance and use of written warnings; and release or forfeiture of seized property. The principal change removes the requirement that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA. The other change corrects a clerical error in a citation to rules pertaining to protective orders issued by Administrative Law Judges.

DATES: Written comments on this proposed rule must be submitted by April 16, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY66, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 301–427–2211, Attn: Frank M. Sprtel, Attorney-Advisor
- Mail: Office of General Counsel for Enforcement and Litigation (GCEL), 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Frank M. Sprtel, GCEL, (301) 427–2202.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA is proposing to amend the civil procedure rules that apply to its administrative proceedings as described below. NOAA is proposing the changes described here: (1) to improve the efficiency and fairness of administrative proceedings; and (2) to correct a citation error.

II. Proposed Revisions

Subpart C—Hearing and Appeal Procedures

Duties and Powers of Judge

Section 904.204: This revision removes the requirement in 15 CFR 904.204(m) that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction, condition, revocation, or denial of permit application (collectively, "civil penalty or permit sanction") assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA in its charging document (see In the Matter of: AGA Fishing Corp., 2001 WL 34683852 (NOAA Mar. 17, 2001)). It requires instead that NOAA justify at a hearing provided for under this Part that its proposed penalty or permit sanction is appropriate, taking into account all the factors required by applicable law. Additionally, by explicitly removing this presumption, this change provides Respondents with a full and fair opportunity to challenge the proposed Agency action.

This revision also corrects a citation in the regulation pertaining to protective orders issued by an Administrative Law Judge that is codified at 15 CFR 904.204(f). The current regulation incorrectly cites § 904.240(d). The regulation is revised to correctly cite § 904.251(h).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule. Nor does this rule contain an information-collection request that would implicate the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The small businesses, as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this rule may affect include, but are not limited to, vessel owners, vessel operators, fish dealers, individual fishermen, small corporations, and others engaged in commercial and recreational activities regulated by NOAA. However, this rule does not have any compliance costs or associated fees for businesses, large or small. This rule is purely procedural, and merely amends and refines NOAA's existing rules of civil procedure.

Because this regulation will impose no significant costs on any small entities, but rather will only modify existing procedural rules, the overall economic impact on small entities, if any, is expected to be nominal. Accordingly, this rule will not substantially impact a significant number of small businesses.

As a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, fisheries, fishing, fishing vessels, penalties, seizures and forfeitures.

Dated: March 12, 2010.

Lois J. Schiffer,

General Counsel, National Oceanic and Atmospheric Administration.

For reasons set forth in the preamble, 15 CFR part 904 is proposed to be amended as follows:

PART 904—CIVIL PROCEDURES

1. The authority citation for part 904 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1531–1544, 16 U.S.C. 1361 *et seq.*, 16 U.S.C. 3371–3378, 16 U.S.C. 1431–1445c–1, 16 U.S.C. 773–773k, 16 U.S.C. 951–962, 16 U.S.C. 5001–5012, 16 U.S.C. 3631–3645, 42 U.S.C. 9101 *et seq.*, 30 U.S.C. 1401 *et seq.*, 16 U.S.C. 971–971k, 16 U.S.C. 781–785, 16 U.S.C. 2401–2413, 16 U.S.C. 2431–2444, 16 U.S.C. 972–972h, 16 U.S.C. 916–916l, 16 U.S.C. 1151–1175 *et seq.*, 16 U.S.C. 3601–3608, 16 U.S.C. 3631–3645, 16 U.S.C. 1851 note; 15 U.S.C. 5601 *et seq.*, Pub. L. 105–277, 16 U.S.C. 1822 note, Section 801(f), 16 U.S.C. 2465(a), 16 U.S.C. 5103(b), 16 U.S.C. 1385 *et seq.*, 16 U.S.C. 1822 note (Section 4006), 16 U.S.C. 4001–4017, 22 U.S.C. 1980(g), 16 U.S.C. 5506(a), 16 U.S.C. 5601–5612, 16 U.S.C. 1822, 16 U.S.C. 973–973R, 15 U.S.C. 330–330(e).

2. Section 904.204 to subpart C is amended by revising paragraphs (f) and (m) to read as follows:

Subpart C—Hearing and Appeal Procedures

§ 904.204 Duties and powers of Judge.

* * * * *

(f) Rule on contested discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.251(h);

* * * * *

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

* * * * *

[FR Doc. 2010–5988 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN24

Presumptions of Service Connection for Persian Gulf Service

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for certain diseases. This proposed amendment is necessary to implement a decision of the Secretary of Veterans Affairs that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of certain infectious diseases. The intended effect of this proposed amendment is to establish presumptive service connection for these diseases and to provide guidance regarding long-term health effects associated with these diseases.

DATES: Comments must be received by VA on or before May 17, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll free number). Comments should indicate that they are submitted in response to "RIN 2900–AN24—Presumptions of Service Connection for Persian Gulf Service." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9739. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

The Persian Gulf War Veterans Act of 1998, Public Law 105–277, title XVI, 112 Stat. 2681–742 through 2681–749 (codified at 38 U.S.C. 1118), and the Veterans Programs Enhancement Act of 1998, Public Law 105–368, 112 Stat. 3315, directed the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which service members may have been exposed during service in the Persian Gulf during the Persian Gulf War. Congress directed the NAS to identify agents, hazards, medicines, and vaccines to which service members may have been exposed during service in the Persian Gulf during the Persian Gulf War.

Congress mandated that the NAS determine, to the extent possible: (1) Whether there is a statistical association between exposure to the agent, hazard, medicine, or vaccine and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association; (2) the increased risk of illness among individuals exposed to the agent, hazard, medicine, or vaccine; and (3) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the agent, hazard, medicine, or vaccine and the illness.

Section 1118 of title 38 of the United States Code provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (*i.e.,* the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War and the occurrence of a diagnosed or undiagnosed illness in humans or animals, the Secretary will publish regulations establishing presumptive service connection for that illness. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

II. Prior National Academy of Sciences Reports

The NAS issued its initial report titled, Gulf War and Health, Volume 1: "Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines," on January 1, 2000. In that report, NAS limited its analysis to the health effects of depleted uranium, the chemical warfare agent sarin, vaccinations against botulism toxin and anthrax, and pyridostigmine bromide, which was used in the Persian Gulf War as a pretreatment for possible exposure to nerve agents. On July 6, 2001, VA published a notice in the **Federal Register** announcing the Secretary's determination that the available evidence did not warrant a presumption of service connection for any disease discussed in that report. *See* 66 FR 35702 (2001).

The NAS issued its second report titled, "Gulf War and Health, Volume 2: Insecticides and Solvents," on February 18, 2003. In that report, the NAS focused on the health effects of insecticides and solvents that were shipped to the Persian Gulf during the Persian Gulf War. The pesticides considered by the NAS were organophosphorous compounds (malathion, diazinon, chlorpyrifos, dichlorvos, and azamethiphos), carbamates (carbaryl, propoxur, and methomyl), pyrethrins and pyrethyroids (permethrin and d-phenothrin), lindane, and *N,N*-diethyl-3-methylbenzamide (DEET). The NAS considered 53 solvents in eight groups: Aromatic hydrocarbons (including benzene), halogenated hydrocarbons (including tetrachloroethylene and dry-cleaning solvents), alcohols, glycols, glycol esters, esters, ketones, and petroleum distillates. On August 24, 2007, VA published a notice in the **Federal Register** announcing the Secretary's determination that the available evidence did not warrant a presumption of service connection for any disease discussed in that report. 72 FR 48734 (2007).

The NAS issued an update on sarin in a report titled "Gulf War and Health: Updated Literature Review of Sarin," on August 20, 2004. In that report, the NAS focused on the long-term health effects from exposure to the nerve agent, sarin. VA published a **Federal Register** notice announcing the Secretary's determination that it was not necessary to establish new presumptions of service connection for any diseases based on the updated findings on long-term health effects from sarin. 73 FR 42411 (2008).

The NAS issued its third report, titled "Gulf War and Health, Volume 3: Fuels, Combustion Products, and Propellants," on December 20, 2004. In that report, the NAS focused on the health effects of hydrazines, red fuming nitric acid, hydrogen sulfide, oil-fire byproducts, diesel-heater fumes, and fuels (for

example, jet fuel and gasoline). On August 28, 2008, VA published a **Federal Register** notice announcing the Secretary's determination that the available evidence does not warrant a presumption of service connection for any disease discussed in that report. 73 FR 50856.

The NAS issued its fourth report, titled "Gulf War and Health Volume 4: Health Effects of Serving in the Gulf War," on September 12, 2006. In that report the NAS focused on the health status of veterans of the 1991 Gulf War. The report was intended to inform VA about illnesses and clinical issues including possible relevant treatments, which might have been overlooked among this population, regardless of the specific underlying cause. VA is drafting a **Federal Register** notice announcing the Secretary's determination that the available evidence does not warrant a presumption of service connection for any disease discussed in that report.

III. Gulf War and Health, Volume 5: Infectious Diseases

The NAS issued its fifth report, titled "Gulf War and Health Volume 5: Infectious Diseases" on October 16, 2006. This report differs from prior NAS reports in that it implicates two tiers of possible association between a hazard and resulting health outcomes. Prior NAS reports generally addressed only one tier of possible association—*i.e.,* the association between exposure to a particular hazard and the development of latent or long-term health effects. The recent NAS report implicates (1) the possible association between exposure to disease-causing pathogens and the subsequent development of an infectious disease (the "primary infectious disease") and (2) the possible association between development of the infectious disease and the development of secondary latent or long-term health effects (the "secondary health effects"). The NAS report addresses only the second tier of association. Specifically, it focused on scientific and medical literature addressing the incidence of long-term health effects in individuals who had been diagnosed with the primary infectious disease and stated findings with respect to only the strength of the evidence for associations between the primary infectious diseases and the secondary health effects. The NAS evaluated the published, peer-reviewed scientific and medical literature on long-term health effects associated with infectious diseases pertinent to service in Southwest Asia and those known to have been of special concern to veterans deployed to that area. The NAS identified over 20,000 potentially relevant scientific reports, and focused on 1,200 that had the necessary scientific quality.

The NAS initially identified approximately 100 diseases that are known to be endemic to Southwest Asia. Because those diseases would in most instances become manifest within a relatively short time after infection, NAS eliminated from consideration any disease that had never been reported in any U.S. troops within a reasonable period following Persian Gulf deployments. The NAS also eliminated from consideration any diseases not known to produce long-term health effects. On that basis, the NAS limited the list of diseases to the nine diseases discussed below.

The committee selected nine infectious diseases that:

(1) Are prevalent in Southwest Asia,

(2) Have been diagnosed among U.S. troops serving there, and

(3) Are known to cause long-term adverse health effects.

The nine diseases are: Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Mycobacterium tuberculosis, Nontyphoid Salmonella, Shigella, Visceral leishmaniasis, and West Nile virus.

In its previous reports, the NAS focused primarily upon health effects of exposure to hazards associated with service in the Southwest Asia theater of operations, as that area was defined for purposes of the 1991 Gulf War. That area was defined to encompass Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations. See Executive Order 12744 (Jan. 12, 1991); 60 FR 6665 (Feb. 3, 1995); 38 CFR 3.317(d)(2). In its 2006 report, at the Secretary's request, the NAS also reviewed infectious diseases that might have affected U.S. troops who served in Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) in Southwest Asia, including service in Afghanistan, which was designated a combat zone effective September 19, 2001, by Executive Order 13239 (Dec. 12, 2001). The NAS indicated that the nine infectious diseases are endemic to the region including Afghanistan and the areas previously designated as the Southwest Asia theater of operations.

Presumptively Service-Connected Illnesses

Although the NAS report focused on the association between a primary infectious disease and secondary health effects, we believe it is necessary to address the issue of the association between exposure to disease-causing pathogens in service and the development of the primary infectious diseases. We do this for two reasons. First, 38 U.S.C. 1118 contemplates that VA will establish presumptions of service connection when there is a positive association between exposure to certain pathogens in Gulf War service and the development of a disease or illness. Second, establishing presumptions of service connection for the primary infectious diseases would facilitate grants of service connection for the secondary health effects identified in the NAS report because, when VA grants service connection for a primary disease, all secondary conditions proximately caused by that disease are also service connected. *See* 38 CFR 3.310.

VA proposes to establish new presumptions of service connection for veterans who have served in the Southwest Asia theater of operations or Afghanistan during certain periods, and who subsequently develop one of the nine diseases known to have long-term adverse health effects.

The NAS did not state specific conclusions regarding the strength of the evidence linking the nine primary infectious diseases to Persian Gulf service. However, its report reflects the view that those diseases and the pathogens that cause them are associated with Persian Gulf service due to their prevalence in Southwest Asia and their incidence in deployed U.S. troops. As the NAS report reflects, the identified disease pathogens, which generally are specific types of bacteria, are known to cause the identified infectious diseases. Accordingly, exposure to those pathogens is necessarily associated with the incurrence of the infectious diseases.

The NAS noted that visceral leishmaniasis is endemic to Southwest Asia and is transmitted by sand fly bites, which are exceedingly common in that region. The NAS noted that malaria is endemic in portions of Southwest Asia, including many parts of Afghanistan, accounting for approximately 6 million cases and 59,000 deaths annually in Southwest and South Central Asia, and that Iraq experienced an epidemic in the wake of the 1991 Gulf War. The NAS noted that West Nile virus is endemic in Afghanistan and other countries in Southwest Asia. The NAS noted that diarrheal diseases were the most common illnesses manifest during the 1991 Gulf War and that studies had

identified shigella, campylobacter, and nontyphoid salmonella bacteria, all endemic in the region, as the pathogens involved in a number of cases (and the only ones known to cause long-term health effects). The NAS noted that the Middle East, including Iraq, Kuwait, and Saudi Arabia, is one of three major endemic zones for brucellosis. Finally, the NAS noted that Q fever is endemic in Southwest Asia, and that tuberculosis is highly endemic in that region. The NAS findings that those diseases are endemic to Southwest Asia reflect well-established and documented facts.

Veterans who were diagnosed with any of these nine infectious diseases while they were serving on active duty will be able to establish direct service connection for their illness and any related health complications. Most of the infectious diseases that were the focus of the NAS were comparatively rare during the 1991 Gulf War, OEF, and OIF. Because these acute infectious diseases are generally quite serious, most cases of these infectious diseases would be diagnosed during service. For example, during the 1991 Gulf War, 20 veterans were diagnosed with cutaneous leishmaniasis, which can cause significant morbidity if left untreated. However, no additional cases have been diagnosed since the end of that conflict. Although diarrheal diseases were one of the most common major infectious disease problems for troops during the 1991 Gulf War, diagnosis of these diseases is defined in large part by their acute and obvious symptomatology.

However, some of the nine infectious diseases reviewed by the NAS might be diagnosed only after the veteran separates from active duty. Furthermore, a service member's initial, in-theater infection may not be detected or reported in the service member's treatment records. That is, in some instances, cases might be overlooked or misdiagnosed while the service member is still on active duty in Southwest Asia. For example, the NAS report describes how tuberculosis infection may remain asymptomatic such that the initial infection might not be expected to be documented in the service member's treatment record. Similarly, visceral leishmaniasis can be initially asymptomatic. Tuberculosis and visceral leishmaniasis can each manifest as an acute infectious disease years or even decades (for tuberculosis) following an initial asymptomatic infection.

Therefore, to respond to concerns of overlooked or delayed diagnoses, we propose to establish new presumptions of service connection for veterans who are initially diagnosed with one of these nine infectious diseases during the defined period discussed below following their military service in Southwest Asia. Such a presumption will benefit Southwest Asia veterans who experienced an initial asymptomatic infection that was not documented in their service treatment records, so long as the condition was later diagnosed within the presumptive period. This would be consistent with existing presumptions of service connection set forth at 38 CFR 3.307 and 3.309 and discussed in greater detail below.

We propose to make the presumptions applicable to veterans who served in the Southwest Asia theater of operations, as currently defined in 38 CFR 3.317(d) (which we propose to redesignate as 3.317(e)), and to veterans who served in Afghanistan on or after September 19, 2001, the date specified in Executive Order 13239 as the date combatant activities commenced in that country. This is based on the findings in the NAS report that the nine infectious diseases are endemic in those regions and were experienced by servicemembers in the 1991 Gulf War, OEF, and OIF.

Some of these nine infectious diseases associated with service in Southwest Asia are already recognized as presumptively service connected for veterans who served during a war period or after 1946. Although this would include veterans who served in the 1991 Gulf War, OEF, and OIF, VA believes there is value in developing new presumptions of service connection that recognize these veterans specifically.

Chronic and tropical diseases that are presumed to be service connected when they become manifest within a specified time period in certain veterans are listed at 38 CFR 3.307 and 3.309 in accordance with 38 U.S.C. 1112(a). Sections 3.307(a)(3) and 3.309(a) include active tuberculosis if manifested to a degree of 10 percent or more within 3 years from the date of separation from service, and §§ 3.307(a)(4) and 3.309(b) include leishmaniasis and malaria if manifested to a degree of 10 percent or more either within 1 year from date of separation from service "or at a time when standard accepted treatises indicate that the incubation period commenced during such service." 38 CFR 3.307(a)(4). Because the current presumptions for tuberculosis, leishmaniasis, and malaria are available to veterans who served in the 1991 Gulf War, OEF, and OIF, it may not seem to be necessary to establish new presumptions of service connection for these three diseases. However, we find that establishing new presumptions of service connection for such veterans serves to acknowledge the specific health risks experienced by this group.

Except as provided below for three diseases, we propose that a covered infectious disease be manifest within 1 year following service in the Southwest Asia theater of operations or Afghanistan in order to qualify for presumptive service connection. This 1-year period would be consistent with the general 1-year presumptive period for tropical diseases currently in 38 U.S.C. 1112(a)(2) and § 3.307(a)(4) and would be consistent with medical principles, reflected in the NAS report, that those diseases ordinarily would be manifest within a short period following infection. We believe this 1-year period would be sufficient to encompass infectious diseases that are likely to have resulted from infection during service in the Southwest Asia theater of operations or Afghanistan.

With respect to malaria, we propose to adopt the same presumptive period as provided for malaria in 38 U.S.C. 1112(a)(2) and § 3.307(a)(4), which require malaria to become manifest within 1 year of service or at a time when standard or accepted treatises indicate that the incubation period commenced during service. This standard would promote consistency with existing law and is consistent with medical principles. The NAS noted that all known cases of malaria in veterans of OEF and OIF were diagnosed between 1 and 399 days after leaving the theater of operations, but that malaria may relapse up to 5 years after initial infection.

We propose no time limit on the presumption for visceral leishmaniasis. We note that the existing presumption of service connection for leishmaniasis in 38 U.S.C. 1112(a)(2) and § 3.307(a)(4) requires the disease to become manifest within 1 year of service or at a time when standard or accepted treatises indicate that the incubation period commenced during service. That flexible standard may encompass latency periods significantly greater than 1 year. However, because the NAS noted that the period of latent infection with visceral leishmaniasis organisms may be long, and that a period of 10 years is commonly cited, we believe that an open-ended presumption period is justified and will be clearer to claimants and adjudicators. To the extent that VA receives a claim under § 3.307(a)(4), the claimant may rely on "Gulf War and Health Volume 5: Infectious Diseases" as a standard treatise indicating the potentially lengthy latency period for leishmaniasis.

The proposed presumption for tuberculosis also would not be time-

limited as the current presumption for that disease is by statutory direction. However, we do not believe this would result in a significant inconsistency. The existing 3-year presumptive period for service connection for tuberculosis in 38 U.S.C. 1112(a) applies to all veterans regardless of period or location of service. That presumption reflects the apparent conclusion that when tuberculosis is manifest within a relatively short time after service, it is reasonable to assume that it had its onset in service, even if there is no identified precipitating factor in service. In contrast, the proposed presumption period is based on a specific risk factor in service (service in the Southwest Asia theater of operations or Afghanistan), rather than a purely temporal relationship. Because tuberculosis may manifest decades after an initial infection, we believe it is reasonable to presume that tuberculosis manifest at any time after such service is related to the known risk factor in service unless the evidence shows otherwise.

With respect to the presumptive periods for visceral leishmaniasis and tuberculosis discussed above, we solicit comments on the following matters. First, whether it would be clearer to claimants and adjudicators to have the same presumptive periods as prescribed in § 1112(a) apply to the presumptions proposed for these two diseases. Second, whether NAS's statement that the period of latent infection with visceral leishmaniasis organisms may be long, and that a period of 10 years is commonly cited, justifies an open-ended presumption period. Third, whether the risk factor of service in the Southwest Asia theater of operations or Afghanistan justifies an open-ended presumption period for tuberculosis.

Secondary Health Effects

In its report, the NAS identified 34 different long-term health effects that might appear weeks to years after initial infection, associated with the nine infectious diseases. Most, if not all, identified long-term health effects are well known to be associated with the initial acute infection. If service connection is granted for a primary infectious disease pursuant to this proposed rule, any secondary health effects proximately due to or caused by the primary infectious disease will also be service connected under existing regulations.

We do not propose to establish presumptions of service connection for the secondary health effects discussed in the NAS report. As explained above, the findings in the NAS report pertained to individuals who had actually developed a primary infectious disease. Those findings thus do not support a presumption that the identified secondary health effects are independently associated with in-service exposure to the disease-causing pathogen in the absence of the primary disease.

Section 1118 of title 38, United States Code, does not direct VA to establish presumptions of service connection for conditions secondarily caused by a primary service-connected disease or illness. Rather, it requires presumptions for disease or illness associated with "exposure to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War." With respect to infectious diseases endemic to the Southwest Asia theater of operations, the relevant "exposure" is exposure to the pathogens that cause the primary infectious disease. The incurrence of the primary infectious disease is not, separately, an "exposure" within the meaning of the statute.

Any long-term health effects among troops serving in Southwest Asia who suffered an initial serious acute infectious disease should in general be addressed via the conventional direct-service-connection route. For example, if an active duty service member were diagnosed with Q fever (Coxiella burnetii) while serving in Southwest Asia, and was diagnosed years later with endocarditis, which is known to be associated with Q fever infection, then that veteran would have a reasonable case for establishing a direct service connection for any related disability.

Chronic long-term health effects associated with these infectious diseases generally would be compensable under the diagnostic code assigned to the service-connected disease or would be considered proximately due to that disease under 38 CFR 3.310(a) (secondary service connection) and rated separately.

As noted above, the NAS's findings concerning the secondary health effects of the nine infectious diseases generally reflect well established medical knowledge. However, to ensure that claimants and VA raters are aware of the NAS findings regarding the potential long-term health effects of the nine infectious diseases associated with service in Southwest Asia, we propose to include information about the long-term health effects in the regulation. The table in proposed paragraph (d), entitled "Table to § 3.317—Long-Term Health Effects Potentially Associated With Infectious Diseases," summarizes the long-term health effects that the NAS reported as associated with the nine infectious diseases. These health effects and diseases are listed alphabetically and are not categorized by the level of association stated in the NAS report. We propose to provide in the regulation that, if a veteran who has or had an infectious disease identified in column A also has a condition identified in column B as potentially related to that infectious disease, VA must determine, based on the evidence in each case, whether the column B condition was caused by the infectious disease for purposes of paying disability compensation.

IV. Regulatory Amendment

After considering all of the evidence as discussed above, the Secretary has determined that there is a positive association between the exposure to a biological, chemical or other toxic agent, environmental or wartime hazard, or preventative medicine or vaccine known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during certain periods and the occurrence of Brucellosis, Campylobacter jejuni, Coxiella burnetii (Q fever), Malaria, Mycobacterium tuberculosis, Nontyphoid Salmonella, Shigella, Visceral leishmaniasis, and West Nile virus. Accordingly, the Secretary has determined that a presumption of service connection for these nine diseases is warranted pursuant to 38 U.S.C. 1118. Therefore, we propose to amend 38 CFR 3.317 to incorporate the new presumptions.

The major changes we propose are:

- To revise the title of the regulation to better reflect the content of the regulation and better reflect the authorizing statute (38 U.S.C. 1117).
- To remove current § 3.317(a)(2)(i)(C). This statement is a blanket statement regarding service connection for diagnosed illnesses determined to be presumptively service connected. Because we are establishing presumptive service connection for specified diseases, we propose to create separate sections to address these diseases. We propose to add the new sections at new § 3.317(c) and (d) and redesignate current § 3.317(c) and (d) as § 3.317 (a)(7) and (e) respectively.
- To establish presumptions of service connection for nine infectious diseases becoming manifest within a specified time after service in the Southwest Asia theater of operations or Afghanistan during certain time periods.

V. Other Diseases

This proposed rule does not reflect determinations concerning any diseases other than those discussed in this proposal. The Secretary's determinations concerning other diseases discussed in the NAS report will be addressed in other documents published in the **Federal Register**.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Executive Order 12866

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 Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.009, Veterans Medical Care Benefits; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: December 9, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Revise § 3.317 to read as follows:

§ 3.317 Compensation for certain disabilities occurring in Persian Gulf veterans.

(a) *Compensation for disability due to undiagnosed illness and medically unexplained chronic multisymptom illnesses.* (1) Except as provided in paragraph (a)(7) of this section, VA will pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of a qualifying chronic disability, provided that such disability:

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2011; and

(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

(2)(i) For purposes of this section, a *qualifying chronic disability* means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) The following medically unexplained chronic multisymptom illnesses that are defined by a cluster of signs or symptoms:

(1) Chronic fatigue syndrome;

(2) Fibromyalgia;

(3) Irritable bowel syndrome; or

(4) Any other illness that the Secretary determines meets the criteria in paragraph (a)(2)(ii) of this section for a medically unexplained chronic multisymptom illness.

(ii) For purposes of this section, the term *medically unexplained chronic multisymptom illness* means a diagnosed illness without conclusive pathophysiology or etiology that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained.

(3) For purposes of this section, "objective indications of chronic disability" include both "signs," in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.

(4) For purposes of this section, disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period will be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which the pertinent evidence establishes that the signs or symptoms of the disability first became manifest.

(5) A qualifying chronic disability referred to in this section shall be rated using evaluation criteria from part 4 of this chapter for a disease or injury in which the functions affected, anatomical localization, or symptomatology are similar.

(6) A qualifying chronic disability referred to in this section shall be considered service connected for purposes of all laws of the United States.

(7) Compensation shall not be paid under this section for a chronic disability:

(i) If there is affirmative evidence that the disability was not incurred during active military, naval, or air service in the Southwest Asia theater of operations; or

(ii) If there is affirmative evidence that the disability was caused by a supervening condition or event that occurred between the veteran's most recent departure from active duty in the Southwest Asia theater of operations and the onset of the disability; or

(iii) If there is affirmative evidence that the disability is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(b) *Signs or symptoms of undiagnosed illness and medically unexplained chronic multisymptom illnesses.* For the purposes of paragraph (a)(1) of this section, signs or symptoms which may be manifestations of undiagnosed illness or medically unexplained chronic multisymptom illness include, but are not limited to:

(1) Fatigue.
(2) Signs or symptoms involving skin.
(3) Headache.
(4) Muscle pain.
(5) Joint pain.
(6) Neurologic signs or symptoms.
(7) Neuropsychological signs or symptoms.
(8) Signs or symptoms involving the respiratory system (upper or lower).
(9) Sleep disturbances.
(10) Gastrointestinal signs or symptoms.
(11) Cardiovascular signs or symptoms.
(12) Abnormal weight loss.
(13) Menstrual disorders.

(c) *Presumptive service connection for infectious diseases.* (1) A disease listed in paragraph (c)(2) of this section will be service connected if it becomes manifest in a Persian Gulf veteran, as defined in paragraph (e)(1) of this section or a veteran who served on active military, naval, or air service in Afghanistan on or after September 19, 2001, provided the provisions of paragraph (c)(3) of this section are also satisfied.

(2) The diseases referred to in paragraph (c)(1) of this section are the following:

(i) Brucellosis.
(ii) Campylobacter jejuni.
(iii) Coxiella burnetii (Q fever).
(iv) Malaria.
(v) Mycobacterium tuberculosis.
(vi) Nontyphoid Salmonella.
(vii) Shigella.
(viii) Visceral leishmaniasis.
(ix) West Nile virus.

(3) The diseases listed in paragraph (c)(2) of this section will be considered to have been incurred in or aggravated by service under the circumstances outlined in paragraphs (c)(3)(i) and (ii) of this section even though there is no evidence of such disease during the period of service.

(i) With three exceptions, the disease must have become manifest to a degree of 10 percent or more within 1 year from the date of separation from a qualifying period of service as specified in paragraph (c)(3)(ii) of this section. Malaria must have become manifest to a degree of 10 percent or more within 1 year from the date of separation from a qualifying period of service or at a time when standard or accepted treatises indicate that the incubation period commenced during a qualifying period of service. There is no time limit for visceral leishmaniasis or tuberculosis to have become manifest to a degree of 10 percent or more.

(ii) For purposes of this paragraph (c), the term *qualifying period of service* means a period of service meeting the requirements of paragraph (e) of this section or a period of active military, naval, or air service on or after September 19, 2001, in Afghanistan.

(4) A disease listed in paragraph (c)(2) of this section shall not be presumed service connected:

(i) If there is affirmative evidence that the disease was not incurred during a qualifying period of service; or

(ii) If there is affirmative evidence that the disease was caused by a supervening condition or event that occurred between the veteran's most recent departure from a qualifying period of service and the onset of the disease; or

(iii) If there is affirmative evidence that the disease is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(5) If a veteran presumed service connected for one of the diseases listed in paragraph (c)(2) of this section is diagnosed with one of the diseases listed in column "B" in the table set forth in paragraph (d) of this section within the time period specified for the disease in that same table, if a time period is specified or, otherwise, at any time, VA will request a medical opinion as to whether it is at least as likely as not that the condition was caused by the veteran having had the associated disease in column "A" in that same table.

(d) *Long-term health effects potentially associated with infectious diseases*—A report of the Institute of Medicine of the National Academy of Sciences has identified the following long-term health effects that potentially are associated with the infectious diseases listed in paragraph (c)(2) of this section. These health effects and diseases are listed alphabetically and are not categorized by the level of association stated in the National Academy of Sciences report. If a veteran who has or had an infectious disease identified in column A also has a condition identified in column B as potentially related to that infectious disease, VA must determine, based on the evidence in each case, whether the column B condition was caused by the infectious disease for purposes of paying disability compensation. This does not preclude a finding that other manifestations of disability or secondary conditions were caused by an infectious disease.

TABLE TO § 3.317—LONG-TERM HEALTH EFFECTS POTENTIALLY ASSOCIATED WITH INFECTIOUS DISEASES

A	B
	Disease
Brucellosis	• Arthritis. • Cardiovascular, nervous, and respiratory system infections. • Chronic meningitis and meningoencephalitis. • Deafness. • Demyelinating meningovascular syndromes. • Episcleritis.

TABLE TO § 3.317—LONG-TERM HEALTH EFFECTS POTENTIALLY ASSOCIATED WITH INFECTIOUS DISEASES—Continued

A	B
	Disease
	• Fatigue, inattention, amnesia, and depression. • Guillain-Barré syndrome. • Hepatic abnormalities, including granulomatous hepatitis. • Multifocal choroiditis. • Myelitis-radiculoneuritis. • Nummular keratitis. • Papilledema. • Optic neuritis. • Orchioepididymitis and infections of the genitourinary system. • Sensorineural hearing loss. • Spondylitis. • Uveitis.
Campylobacter jejuni	• Guillain-Barré syndrome *if manifest within 2 months of the infection.* • Reactive Arthritis *if manifest within 3 months of the infection.* • Uveitis *if manifest within 1 month of the infection.*
Coxiella burnetii (Q fever)	• Chronic hepatitis. • Endocarditis. • Osteomyelitis. • post-Q-fever chronic fatigue syndrome. • Vascular infection.
Malaria	• Demyelinating polyneuropathy. • Guillain-Barré syndrome. • Hematologic manifestations (particularly anemia after falciparum malaria and splenic rupture after vivax malaria). • Immune-complex glomerulonephritis. • Neurologic disease, neuropsychiatric disease, or both. • Ophthalmologic manifestations, particularly retinal hemorrhage and scarring. • *Plasmodium falciparum.* • *Plasmodium malariae.* • *Plasmodium ovale.* • *Plasmodium vivax.* • Renal disease, especially nephrotic syndrome.
Mycobacterium tuberculosis	• Active tuberculosis. • Long-term adverse health outcomes due to irreversible tissue damage from severe forms of pulmonary and extrapulmonary tuberculosis and active tuberculosis.
Nontyphoid *Salmonella*	• Reactive Arthritis *if manifest within 3 months of the infection.*
Shigella	• Hemolytic-uremic syndrome *if manifest within 1 month of the infection.* • Reactive Arthritis *if manifest within 3 months of the infection.*
Visceral leishmaniasis	• Delayed presentation of the acute clinical syndrome. • Post-kala-azar dermal leishmaniasis *if manifest within 2 years of the infection.* • Reactivation of visceral leishmaniasis in the context of future immunosuppression.
West Nile virus	• Variable physical, functional, or cognitive disability.

(e) *Service.* For purposes of this section:

(1) The term *Persian Gulf veteran* means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations.

(2) The *Southwest Asia theater of operations* refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations during the Persian Gulf War.

Authority: 38 U.S.C. 1117, 1118.

Editorial Note: This document was received in the Office of the Federal Register on March 15, 2010.

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BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0482; FRL–9128–3]

Approval and Promulgation of Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve numerous revisions to the Idaho State Implementation Plan (SIP) that were submitted to EPA by the State of Idaho

on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act or CAA). EPA is taking no action in this rulemaking on a number of submitted rule revisions that are unrelated to the purposes of the implementation plan.

DATES: Comments must be received on or before April 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2008–0482, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: R10-Public_Comments@epa.gov.*
- *Mail:* Donna Deneen, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. *Attention:* Donna Deneen, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2008–0482. 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, is not placed on the Internet and 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 during normal business hours at the Office of Air, Waste and Toxics EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen at telephone number: (206) 553–6706, *e-mail address: deneen.donna@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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I. Purpose of Proposed Action

The purpose of this action is to propose approval of multiple revisions to Idaho's SIP that were submitted to EPA by the State of Idaho Department of Environmental Quality (IDEQ) on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008 and June 8, 2009. The SIP submittals revise and amend IDEQ's Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) currently in the federally approved Idaho SIP (Code of Federal Regulations Part 52, subpart N). This action will update the federally approved SIP to reflect changes to IDAPA 58.01.01 that were made by IDEQ and reviewed and deemed approvable into the SIP. The proposed SIP revisions are explained in more detail below along with our evaluation of how these rules comply with the requirements for SIPs and the basis for our action.

II. Background for Proposed Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain and/or maintain the National Ambient Air Quality Standards (NAAQS) and EPA's actions regarding approval of those SIPs. With this action we are proposing approval of multiple SIP submittals and further background for each one is provided in the section below. We are taking no action on some of the provisions in some submittals because they are not related to the criteria pollutants regulated under title I of the Act or the requirements for SIPs under section 110 of the Act.

III. Idaho SIP Revisions

Table 1 includes a list of each SIP submittal including the submittal date, title and sections of IDAPA 58.01.01 that are revised. The paragraphs that follow Table 1 include further information for each SIP submittal including a summary of the submittal with relevant background information and analysis to support our action.

TABLE 1—IDEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION

Date of submittal	Title (with IDEQ Docket No.)	Sections of IDAPA 58.01.01 revised or amended
05/22/2003 [1]	Soil Vapor Extraction (58–0101–0102)	58.01.01.210.
	2001 IBR of Federal Regulations (58–0101–0103)	58.01.01.008 and 107.
	Hospital/Medical/Infectious Waste Incinerators (58–0101–0103).	58.01.01.861.

TABLE 1—IDEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION—Continued

Date of submittal	Title (with IDEQ Docket No.)	Sections of IDAPA 58.01.01 revised or amended
	Permit Clarification (58–0101–0202)	58.01.01.209, 213, 228, 313, 317, 395, 410, 511, 581, 700 and 710–724.
	2002 IBR of Federal Regulations (58–0101–0202)	58.01.01.008 and 107.
	Permitting Fees (58–0101–0104)	58.01.01.01.006, 007, 200–202, 209, 224–228, 400–402, 404, 407–410, 470, 800–802.
	Title V Operating Permit Fees (58–0101–0203)	58.01.01.387–399.
04/02/2004	2003 IBR of Federal Regulations (58–0101–0301)	58.01.01.008 and 107.
07/13/2005	New Source Review (58–0101–0304)	58.01.01.006, 200, 202, 204, 205, 206, 209, 225 and 401.
	Permit to Construct Exemptions (58–0101–0401)	58.01.01.220 and 222.
	2004 IBR of Federal Regulations (58–0101–0402)	58.01.01.008, 107, 200, 204 and 205.
05/05/2006[2]	Regulated Air Pollutants (58–0101–0503)	58.01.01.006–008, 133–135, 155, 213, 220, 440–442, 460, 511–513, 560–561, 575, 581, and 679.
	2005 IBR of Federal Regulations (58–0101–0505)	58.01.01.008, 107, 200, 204 and 205.
	Procedure for Transfer of Permit to Construct and Tier II permits (58–0101–0506).	58.01.01.006, 007, 209, and 404.
	Permit to Construct Exemptions (58–0101–0507)	58.01.01.222.
04/16/2007	2006 IBR of Federal Regulations (58–0101–0602)	58.01.01.008, 107, 200, 204, 205.
	Mercury (58–0101–0603)	58.01.01.199.
05/12/2008	2007 IBR of Federal Regulations (58–0101–0701)	58.01.01.008, 107, 200, 204, 205.
06/08/2009[1]	Sulfur Content of Fuels (58–0101–0703)	58.01.01.725.
	2008 IBR of Federal Rules (58–0101–0802)	58.01.01.008 and 107.

[1] The May 22, 2003 and June 8k 2009 SIP submittals included IDEQ SIP revisions for the control of nonmetallic mineral processing plants (IDEQ Docket 58–0101–0002 and a portion of Docket 58–0101–0002), which will be acted on in a separate action.

[2] The May 6, 2006 submittal included IDEQ's SIP revision for the facility emissions cap (IDEQ Docket 58–0101–0508) which will be acted on in a separate action.

A. Annual Incorporation by Reference (IBR) of Federal Regulations

IDAPA 58.01.01 incorporates by reference various portions of Federal regulations codified in the Code of Federal Regulations (CFR). However, when a Federal regulation originally incorporated by reference into IDAPA 58.01.01 on a specific date is subsequently changed, IDAPA 58.01.01 becomes out of date and, in some cases, inconsistent with the revised version of the Federal regulation. To avoid potential inconsistencies and keep IDAPA 58.01.01 up to date with changes in Federal regulations, IDEQ submits a revision to its SIP on an annual basis updating the IBR citations in IDAPA 58.01.01 so they reflect any changes made to the Federal regulations during that year.

Annual Incorporation of Federal Regulations by Reference SIPs for the years 2001 through 2008 were submitted to EPA on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008 and June 8, 2009, respectively. Because the most recent annual IBR submittals of May 12, 2008 (including the 2007 Annual IBR) and June 8, 2009 (including the 2008 Annual IBR) supersede the Annual IBR updates for 2001 through 2006, they are the most recent and only versions of certain sections of IDAPA 58.01.01 that need to be incorporated into the SIP. The 2007 Annual IBR changed the way Federal regulations are incorporated by reference into IDAPA 58.01.01.200, 204 and 205. Specifically, rather than listing the IBR of Federal regulations in each of these three sections, IDAPA 58.01.01.200, 204 and 205 now include language stating that the applicable Federal regulations are incorporated by reference into the rules at section 107. This revision simplifies future annual IBR updates by minimizing the sections of IDAPA 58.01.01 that need to be revised each year. The 2008 Annual IBR includes the most recent revisions to IDAPA 58.01.01.107 incorporating Federal regulations updated as of July 1, 2008.

The 2007 Annual IBR was subject to a public hearing on September 6, 2007, adopted by the Board of Environmental Quality on October 10, 2007, and became effective on April 2, 2008. The revisions to IDAPA 58.01.01.200, 204 and 205 with the effective date of April 2, 2008 are proposed for incorporation into the SIP. The 2008 Annual IBR was subject to a public hearing on September 9, 2008, adopted by the Board of Environmental Quality on October 9, 2008, and became effective on May 8, 2009. The revisions to IDAPA 58.01.01.107 with an effective date of May 8, 2009 are proposed to be approved into the SIP with the exception of subsections 107.03 (g) through (n) and (p) which are not related to the criteria pollutants regulated under title I of the Act or the requirements for SIPs under section 110 of the Act (see prior discussion in 67 FR 52666). Similarly, the revisions to IDAPA 58.01.01.008 are not being acted on since they are related to Idaho's Tier I Operating Permit Program required under title V of the Act and are not part of the SIP.

B. New Source Review (NSR) Regulations

Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515, set forth preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA, known as "major New Source Review" or "major NSR." The major NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. States adopt major NSR programs as part of their SIP. Part C is the "Prevention of Significant Deterioration" or "PSD" program, which applies in areas that meet the NAAQS (*i.e.,* "attainment" areas) as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS (*i.e.,* "unclassifiable" areas). Part D is the "Nonattainment New Source Review" or the "NNSR" program, which applies in areas that are not in attainment of the NAAQS (*i.e.,* "nonattainment areas"). EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

On December 31, 2002, EPA published final rule changes to the PSD and NNSR programs (67 FR 80186) and on November 7, 2003, EPA published a

notice of final action on the reconsideration of the December 31, 2002 final rule changes (68 FR 63021). In the November 7, 2003 final action, EPA added the definition of "replacement unit," and clarified an issue regarding plantwide applicability limitations (PALs). The December 31, 2002 and the November 7, 2003 final actions, are collectively referred to as the "2002 NSR Reform Rules."

The 2002 NSR Reform Rules made changes to five areas of the major NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of "physical change or change in the method of operation."

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 5276, August 7, 1980). On June 24, 2005, the DC Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *See New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the 2002 NSR Reform Rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping (40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6)), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from Federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the DC Circuit Court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action to establish that a "reasonable possibility" applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant (72 FR 72607). The "reasonable possibility" provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records.

The 2002 NSR Reform Rules require that State agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. On July 13, 2005, IDEQ submitted revisions to its NSR rules to incorporate EPA's NSR reform provisions. Specifically, IDAPA 58.01.01.006, 200, 202, 204, 205, 206, 209, 225 and 401 were revised to incorporate EPA's major NSR reform measures into the existing rules. The revisions were subject to a public hearing on June 8, 2004, adopted by the Board of Environmental Quality on October 20, 2004, and became effective in Idaho on April 6, 2005. Idaho developed these latest revisions by comparing the Federal major NSR regulations in 40 CFR parts 51 and 52 to the existing State rules. The primary sections revised include IDAPA 58.01.01.204 and 205. Rather than delineate the entire Federal major NSR rules, Idaho chose to incorporate by reference the appropriate NSR reform portions of the Federal program requirements maintaining the remainder of its previously approved NSR rules not affected by the NSR reform. As noted in section III.A above, IDEQ submits an annual update to its rules that IBR Federal regulations, thus keeping the State's rules up to date with changes in the Federal rules.

For a discussion of our approval of IDEQ's NSR rules not changed by IDEQ's NSR Reform SIP revision, see EPA's January 16, 2003 approval of IDEQ's NSR rules (68 FR 2217). A discussion of IDEQ's July 13, 2005 SIP revisions to IDAPA 58.01.01.006, 200, 202, 204, 205, 206, 209, 225 to meet the specific requirements of NSR reform measures follows. IDAPA 58.01.01.006 General Definitions, was revised to remove definitions for Major Facility and Major Modification from the General Definitions and IDAPA 58.01.01.200 Procedures and Requirements for Permits to Construct, was revised to specify that a Major Facility is a Major Stationary Source as defined in 40 CFR 52.21(b) and a Major Modification is a Major Modification as defined in 40 CFR 52.21(b). IDAPA 58.01.01.202 Application Procedures, was revised to remove the exceptions for Major Facilities and Major Modifications consistent with the definitional changes in 58.01.01.200. IDAPA 58.01.01.204 Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas, was revised to expressly state the intent of the rule is to incorporate the Federal nonattainment NSR rule requirements and includes a table of the sections of 40 CFR 51.165 and 52.21, as revised through November 7, 2003 [1] that are incorporated by reference including [2]: 40 CFR 51.165(a)(1) regarding definitions; 40 CFR 51.165(a)(2)(ii) through 51.165(a)(3) regarding applicability [3]; 40 CFR 51.165(a)(6)(i)–(iv) regarding applicability; and 40 CFR 52.21(aa) regarding Actual PALs, which meets the provisions of 51.165(f). IDAPA 58.01.01.205 Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas, was revised to expressly state that the intent of the rule is to incorporate the Federal PSD rule requirements and includes a table of the sections of 40 CFR 52.21, as revised through November 7, 2003 [4] that are incorporated by reference including [5]:

[1] IDEQ annually submits updates to its IBR of Federal rules. Subsequent to the July 13, 2005 SIP revisions, annual IBR updates have occurred as outlined in section III.A, making Idaho's rules consistent with the changes that have occurred in the Federal rules though July 2007.

[2] The July 13, 2006 submittal also incorporated by reference 40 CFR 165(c) regarding Clean Unit Test for Emission Units that are Subject to LAER (Lowest Achievable Emissions Rate), 40 CFR 165(d) regarding Clean Unit Provisions for Emission Units that Achieve an Emission Limitation Comparable to LAER and 40 CFR 52.21(z)(1)–(3) and (5) regarding PCP Exclusion Procedural Requirements. However, on July 24, 2006, IDEQ amended the July 13, 2005 SIP revision requesting that EPA not act on the clean unit and PCP provisions since these provisions were being removed from the State rule consistent with the vacature of these provisions from the Federal rule.

[3] Note this IBR citation was incorrectly cited in the SIP revision submitted to EPA on July 13, 2005, and IDEQ has confirmed that that reference was intended to incorporate by reference 40 CFR 51.165(a)(2)(ii)(A) through 51.165(a)(3)(ii)(J). Section 51.165(a)(2)(ii) includes sub-paragraphs (A) through (F) and state plans must also include the provisions in 165(a)(3)(i) and (ii) (A) through (J). On September 15, 2008, IDEQ submitted a letter to EPA stating that the reference in IDAPA 58.01.01.204 to 40 CFR 51.165(a)(2)(ii)(A)–(J) in IDEQ's original submittal was in error and had been administratively corrected to incorporate by reference 40 CFR 51.165(a)(2)(ii) through 51.165(a)(3).

[4] IDEQ annually submits updates to its IBR of Federal rules. Subsequent to the July 13, 2005 SIP revisions, annual IBR updates have occurred as outlined in section III.A above making Idaho's rules consistent with the changes that have occurred in the Federal rules through July 2007.

[5] The July 13, 2006 submittal also incorporated by reference 40 CFR 52.21(x) Clean Unit Test for Emissions Units that are Subject to Best Available Control Technology (BACT) or LAER, 40 CFR 52.21(y) Clean Unit Provisions for Emissions Units that Achieve an Emission Limitation Comparable to BACT and 40 CFR 52.21(z)(1)–(3) and (6) PCP Exclusion Procedural Requirements. However, on July 24, 2006 IDEQ amended the July 13, 2005 SIP revision by requesting that EPA not act on the clean unit and PCP provisions since these provisions were being removed from the State rule consistent with the vacature of these provisions from the Federal rule.

40 CFR 52.21(a)(2) Applicability Procedures; 40 CFR 52.21(b) Definitions; 40 CFR 52.21(i) Exemptions; 40 CFR 52.21(j) Control Technology Review; 40 CFR 52.21(k) Source Impact Analysis; 40 CFR 52.21(r) Source Obligation; 40 CFR 52.21(v) Innovative Control Technology; 40 CFR 52.21(w) Permit Rescission; and 40 CFR 52.21(aa) Actuals PALs. IDAPA 58.01.01.205.02 specifies, where appropriate, those section of incorporated 40 CFR 52.21 where the use of the word "Administrator" means the "Department" and IDAPA 58.01.01.205.03 specifies existing requirements for non-major sources that are exempted or excluded from 40 CFR 52.21. IDAPA 58.01.01.206 Optional Offsets for Permits to Construct, was revised to change cross-references to subsections for consistency with the above changes. IDAPA 58.01.01.209 Procedures for Issuing Permits, was revised to remove the exceptions for Major Facilities and Major Modifications consistent with the definitional changes in IDAPA 58.01.01.200. IDAPA 58.01.01.225 Permit to Construct Processing Fee, was revised for consistency with definitional changes in IDAPA 58.01.01.205. And IDAPA 58.01.01.401 Tier II Operating Permit, was revised for consistency with changes to IDAPA 58.01.01.204.

Idaho's major NSR SIP submission meets the EPA NSR reform requirements for SIP-approved NSR programs in 40 CFR 51.165 and 166 and 40 CFR 52.21. The revised rules address baseline actual emissions, actual-to-projected actual applicability tests, PALs, and other currently applicable provisions of EPA's 2002 NSR Reform Rules. In fact, the majority of the Federal NSR Reform provisions in 40 CFR 51.165 and 52.21 are incorporated by reference directly into Idaho regulations and, as noted in section III.A above, IDEQ annually updates its IBR of Federal rules to keep the State's rules consistent with changes to the Federal NSR rules and the most recent IBR update revision includes citations to Federal NSR regulations revised as of July 1, 2007 with a State effective date of April 2, 2008.

C. Permit To Construct Exemptions

EPA last approved revisions to Idaho's Permit to Construct[6] Exemptions on January 16, 2003 (68 FR 2217) and we provided a detailed discussion of our analysis in the August 13, 2002 Proposed Rule (67 FR 52666). In brief, when we approved IDEQ's minor NSR exemption provisions in IDAPA 58.01.01.220 through 222, we noted that we based our approval on our determination that the emission levels and source categories specified in the rules are appropriately exempted from minor NSR. While IDAPA 58.01.01.220.01.a.iii included additional provisions that required modeling the impact of a source's uncontrolled potential to emit to be exempt from minor NSR permitting in Idaho, we specifically noted that our approval was not based on the requirement for modeling since such modeling is part of the permitting process itself and, therefore, not typically included as criteria a source must meet to qualify for an exemption from the permitting process. Our August 13, 2002 Proposed Rule (67 FR 52666) and January 16, 2003 Final Rule (68 FR 2217) also noted that the "director's discretion" provisions in IDAPA 58.01.01.222.03 and 222.01.f do not meet the requirements of section 110 of the CAA and, therefore, we did not approve these provision into the SIP.

In response to our actions in the prior rulemaking (67 FR 52666 and 68 FR 2217) discussed above, IDEQ removed the modeling requirements from IDAPA 58.01.01.220 and the "director's discretion" provisions from IDAPA 58.01.01.222 and submitted two separate SIP revisions to its Permit to Construct Exemption Rules IDAPA 58.01.01.220 and 222 for approval into the SIP on July 13, 2005 and May 5, 2006. The July 13, 2005 revisions were subject to a public hearing on October 4, 2004, adopted by the Board of Environmental Quality on November 18, 2004, and became effective on April 6, 2005. The May 5, 2006 revisions were subject to a public hearing on October 11, 2005, adopted by the Board of Environmental Quality on November 17, 2005, and became effective on April 11, 2006.

The July 13, 2005 and May 5, 2006 SIP submittals revised IDAPA 58.01.01.220 to strike-out the modeling provisions included in IDAPA 58.01.01.220.01.a.iii and revised 58.01.01.222 to strike out the "director's discretion" provisions in IDAPA 58.01.01.222.01.f and 222.03. IDEQ's May 5, 2006 SIP also revised 58.01.01.222.1.d to change the criteria for internal combustion engines operating for emergency purposes from operating for less than 200 hours to operating less than 500 hours and revised IDAPA 58.01.01.222.2.c to add biogas as an allowable fuel for fuel-burning equipment with capacity less than 50 million BTU per hour used for indirect heating and heating or reheating furnaces, providing that the hydrogen sulfide concentration is below 200 parts per million by volume. In addition, three new paragraphs were added to exempt additional sources. IDAPA 58.01.01.222.2.i exempts multiple chamber crematories providing they use natural gas exclusively, have a maximum average charge capacity of 200 pounds of remains per hour and minimum secondary combustion chamber temperature of 1500 degrees Fahrenheit; IDAPA 58.01.01.222.2.j exempts petroleum environmental remediation source by vapor extraction providing the operation life is less than five years and the short term adjustment factor for air toxics (IDAPA 58.01.01.210.15) is not used if source is within 500 feet of a sensitive receptor; and IDAPA 58.01.01.222.2.k exempts dry cleaning facilities providing they are not major under, but are subject to, 40 CFR part 63 subpart M.

IDEQ's July 13, 2005 and May 5, 2006 rule revisions address the "directors discretion" and modeling issues previously raised by EPA (67 FR 52666, 68 FR 2217) and are proposed to be approved into the SIP. IDEQ's May 5, 2006 revisions expanding the Permit to Construct Exemptions for certain sources are also proposed to be approved into the SIP.

It is important to note that in order for any source to qualify for a source-category exemption under IDAPA 58.01.01.222, it must first satisfy the criteria set forth in IDAPA 58.01.01.220 which includes the general exemption criteria for permits to construct, further limiting the scope of IDEQ's source-category exemptions. IDAPA 58.01.01.220.01.a requires that the maximum capacity of a source to emit an air pollutant under its physical and operational design without consideration of limitations on emission such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed would not equal or exceed one hundred (100) tons per year of any regulated air pollutant and would not cause an increase in the emissions of a major facility that equals or exceeds the significant emissions rates. In addition, IDEQ retains the legal authority pursuant to IDAPA 58.01.01.401.03 to require a source to obtain an air quality permit to ensure compliance with applicable rules, including the NAAQS.

D. Permitting Fees

On May 22, 2003 IDEQ, submitted revisions to IDAPA 58.01.01.224 through 228, 407 through 410, 470 and 800 through 802 revising its regulations pertaining to permit fees associated with

[6] NSR permits are referred to as "permits to construct" or "PTC"s in Idaho.

IDEQ's Permit to Construct and Tier I and II Operating Permits programs. The revisions were subject to a public hearing on October 9, 2001, adopted by the Board of Environmental Quality on November 8, 2001, and became effective on July 1, 2002. While IDEQ submitted the permit fee rules to EPA, it specifically noted the revisions that establish or revise permitting fees were only included in the SIP submittal for informational purposes and that IDEQ did not intend that EPA include the fee related rules into the SIP. We are proposing to take no action on IDAPA 58.01.01.224–228, 408–410 and 800–802 which deal with the collection of various fees associated with IDEQ's Permit to Construct and Tier I and II Operating Permits. The Tier I permits are not related to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section 110 of the Act. While the fee provisions associated with Permits to Construct and Tier II permits are related to criteria pollutant programs under title I of the Act, IDEQ has requested that these provisions not be included in the SIP because of the frequency of revisions to the fee rules.

IDEQ's May 22, 2003 SIP submittal included minor editorial changes IDAPA 58.01.01.006, 007, 200–202, 209, 400–402 and 404, that were made concurrent with the revisions to the fee rules. We reviewed the editorial changes to IDAPA 58.01.01.006, 007, 200–202, 209, 400–402 and 404 and found them to be appropriate and we propose to approve them into the SIP to update the SIP which includes previously approved versions of these rules. In addition, the revision to IDAPA 58.01.01.470 strikes the existing fee language making IDAPA 58.01.01.470 a reserved paragraph and we propose to approve this change in the SIP.

E. Soil Vapor Extraction

On May 22, 2003 IDEQ submitted revisions to IDAPA 58.01.01.210 to add paragraph 16.c, which allows IDEQ to waive the requirements of IDAPA 58.01.01.513 for any environmental remediation source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product. The revisions were subject to a public hearing on February 6, 2001, adopted by the Board of Environmental Quality on October 18, 2001, and became effective on March 15, 2002. This portion of the May 22, 2003 SIP submittal deals with IDEQ's air toxic regulations and is not currently in the Idaho SIP. Because this regulation does not relate to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section 110 of the Act, EPA is proposing to take no action on this provision.

F. Hospital/Medical/Infectious Waste Incinerators

On May 22, 2003 IDEQ submitted revisions to IDAPA 58.01.01.861, Standards of Performance of Hospital/Medical/Infectious Waste Incinerators, to clarify that owners or operators of hospital/medical/infectious waste incinerators subject to IDAPA 58.01.01.861 must comply with the provisions of section 39–128. The revisions were subject to a public hearing on August 8, 2001, adopted by the Board of Environmental Quality on October 18, 2001, and became effective on March 15, 2002. Although this portion of the May 22, 2003 SIP submittal rule is an important part of IDEQ's overall air program, IDAPA 58.01.01.861 is not currently in the Idaho SIP and is not related to requirements for SIPs under section 110 of the Act. Therefore, EPA is not taking any action on these provisions.

G. Permit Clarifications

On May 22, 2003 IDEQ submitted its Permit Clarification SIP submittal including revisions to IDAPA 58.01.01.209, 213, 228, 313, 317, 395, 410, 511, 581, 700, and 710–724 to update and clarify the rules. The revisions were subject to a public hearing on October 8, 2002, adopted by the Board of Environmental Quality on November 13, 2002, and became effective on May 3, 2003. The revisions to IDAPA 58.01.01.209.01.c, 700.01 and 710–724 reversed earlier revisions IDEQ made to these particulate matter process weight limitations in response to EPA's determination that the earlier revisions were less stringent than those currently in the SIP. In effect, the revisions to IDAPA 58.01.01.209.01.c, 701.01 and 710–724 change the regulatory language in these rules back to reflect the existing language in the SIP approved rules. To maintain consistency between the federally approved rules and State rules, specifically regarding the State rule effective dates, IDAPA 58.01.01.700 with a State effective date of May 3, 2003 is proposed to be approved into the SIP. The revisions to IDAPA 58.01.01.313 and 317 revise the Tier I operating permit rules and the revisions to IDAPA 58.01.01.228, 395 and 410 revise the timeframes, from 30 to 35 days, for appealing fees associated with Permits to Construct and Tier I and II Operating Permits. We are proposing to take no action on IDAPA 58.01.01.313, 317, 228, 395, and 410 as these rules deal with IDEQ's Tier I operating permit program and the collection of various fees associated with IDEQ's Permit to Construct and Tier I and II Operating Permits. As noted in III.D above, the Tier I permits are not related to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section 110 of the Act and, while the fee provisions associated with Permits to Construct and Tier II permits are related to criteria pollutant programs under title I of the Act, IDEQ has requested that these fee provisions not be included in the SIP because of the frequency of revisions to the fee rules.

IDEQ's May 22, 2003 Permit Clarification SIP submittal also included editorial revisions to IDAPA 58.01.01.213 and 511 and 581 for clarification and to correct cross-referencing section numbers. We reviewed the editorial changes to IDAPA 58.01.01.213 and 511 and 581, found them to be appropriate and propose to approve these revisions with the State effective date of May 3, 2003 into the SIP, thereby updating the SIP to reflect the revised State rules.

H. Title V Operating Permit Fees

On May 22, 2003, IDEQ submitted its title V Operating Permit Fees SIP including revisions to IDAPA 58.01.01.387–399. The revisions were subject to a public hearing on October 8, 2002, adopted by the Board of Environmental Quality on November 13, 2002, and became effective on April 2, 2003. In its submittal IDEQ clarified that it was submitting these rule revisions to EPA for informational purposes only and it did not intend to have the title V Operating Permit Fee rules incorporated into the SIP. We are proposing to take no action on IDAPA 58.01.01.387–399 as these rules deal with IDEQ's Tier I operating permit program and the collection of various fees associated with IDEQ's Tier I Operating Permits. The IDEQ's Tier I permit program is the operating permit program required under title V of the Act and is not part of the criteria pollutants regulated under title I of the CAA or the requirements for SIPs under section 110 of the Act.

I. Regulated Air Pollutants

On May 5, 2006 IDEQ submitted revisions to IDAPA 58.01.01.006–008, 133–135, 155, 213, 220, 440–442, 460, 511–513, 560–561, 575, 581, and 679 to incorporate a new definition for "regulated air pollutant" to be consistent with Federal requirements with respect to the treatment of fugitive emissions in determining applicability for operating permits and permits to construct. The revisions were subject to a public

hearing on September 7, 2005, adopted by the Board of Environmental Quality on November 17, 2005, and became effective on April 11, 2006. A separate public hearing was held on December 5, 2005, regarding changes to Idaho Code 39–115 that were part of the SIP revision containing the regulatory changes to IDAPA 58.01.01. The specific regulatory changes that EPA is proposing to approve into the SIP are discussed below.

IDAPA 58.01.01.006 was revised to modify the definition of "regulated air pollutant" to be consistent with Federal rules and to modify the definition of "modification" by adding language stating that "fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law." The revisions make the treatment of fugitive emissions in determining major source and major modification thresholds consistent with Federal major NSR rules. On December 19, 2008, EPA promulgated its final rulemaking regarding its reconsideration of the inclusion of fugitive emissions in the NSR program (73 FR 77882). In this rulemaking, EPA made the treatment of fugitive emissions for determining major modifications consistent with the treatment of fugitive emissions for determining major source thresholds. In brief, this rulemaking requires that fugitive emissions be included in determining whether a physical change or change in operation results in a major modification only for sources in source categories designated through rulemaking pursuant to section 302(j) of the Act (*i.e.,* "listed sources"). The change to the treatment of fugitive emissions became effective in the Federal NSR program on January 20, 2009 and became effective in the Federal PSD program on February 17, 2009. However, on February 17, 2009, EPA received a petition from the Natural Resources Defense Council to reconsider and stay the December 19, 2008, final fugitive emissions final rule. EPA granted the petition on April 24, 2009 and published a **Federal Register** notice on September 30, 2009 establishing a three-month administrative stay of the rule (74 FR 50115). Because IDEQ's program now treats fugitive emissions in the same manner as "required by federal law," these changes are also effective in the IDEQ major NSR.

It is important to note that in its final rulemaking on the reconsideration of fugitive emissions (73 FR 77882), EPA noted that a state has considerable latitude to customize its minor NSR program regarding the treatment of fugitive emissions and that state authorities should explicitly indicate how fugitive emissions are to be accounted for in all aspects of the state's minor NSR (*see* page 77890). The definition of "major modification" used in IDEQ's major NSR rules is distinctly different from the revised definition for modification in IDAPA 58.01.01.006 which applies to IDEQ's "minor" NSR rules. The statement in IDEQ's definition of "regulated air pollutant" that "fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law" therefore created a potential lack of clarity regarding the treatment of fugitive emissions in Idaho's minor source program. EPA therefore requested that IDEQ clarify this issue. On September 25, 2009 IDEQ, submitted additional information to EPA explicitly stating that fugitive emissions in IDEQ's minor source program are treated the same way they are in its major NSR program, *i.e.,* fugitive emissions at minor sources of listed source categories are included in determining the source's potential to emit and whether there is a modification. In light of IDEQ's clarification regarding the treatment of fugitive emissions in its minor NSR program, EPA proposes to approve the revisions to IDAPA 58.01.01.006 with the exception of subsection (b) of the definition of "modification" (codified as IDAPA 58.01.01.006.55.b in this submission, and subsequently renumbered). This subparagraph (b) in the definition of "modification pertains to the "state only" toxics air pollutant program and is not related to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section 110 of the Act. Therefore, EPA is not taking any action on this subparagraph.

The May 5, 2006 SIP included additional editorial revisions to IDAPA 58.01.01.006, 007, 133, 134, 135, 155, 213, 220, 460, 511, 512, 513, 560, 561, 575, 581, and 679 to make those sections consistent with the definitional changes to "modification" and "regulated air pollutant." EPA reviewed these changes and proposes to approve them. Similar editorial changes were also made to sections IDAPA 58.01.01.008, 440 and 441; however, EPA is taking no action on IDAPA 58.01.01.008, 440 and 441. The rationale is provided in detail in our previous action on Idaho's SIP (67 FR 52666).

J. Procedure for Transfer of Permits To Construct and Tier II Operating Permits

On May 5, 2006 IDEQ submitted revisions to IDAPA 58.01.01.006, 007, 209 and 404 modifying definitions for its major and minor source air quality permitting programs and submitted two new rule subsections allowing for the transfer of permits to construct and Tier II operating permits. The revisions were subject to a public hearing on September 7, 2005, adopted by the Board of Environmental Quality on October 12, 2005, and became effective on April 11, 2006. The specific regulatory changes that EPA is proposing to approve into the SIP are discussed below.

The revisions to IDAPA 58.01.01.006 change the definition of "modification" to refer to an "emissions increase" as defined in IDAPA 58.01.01.007. The revisions to IDAPA 58.01.01.007 include new definitions for "baseline actual emissions," "begin actual construction," "emissions increase," and "projected actual emissions," as well as editorial revisions to other definitions to maintain consistency with the new definitions. The revisions to IDAPA 58.01.01.209 add a new section IDAPA 58.01.01.209.06 titled, Transfer of Permits to Construct, which includes the requirements for transferring a permit to construct to a new owner or operator of the source. Similarly, the revisions to IDAPA 58.01.01.404 add a new section IDAPA 58.01.01.404.05 titled, Transfer of Tier II Permits, which includes the requirements for transferring a Tier II permit to a new owner or operator of the source. The definition revisions in IDAPA 58.01.01.006 and 007 are consistent with and, in many instances, identical to the definitions in 40 CFR 52.21(b) (definitions for Federal PSD program) and we are proposing to approve these revisions into Idaho's SIP. The new procedures for the transfer of permits in IDAPA 58.01.01.209.6 and 58.01.01.404.5 clarify existing practices and we propose to approve these revisions into the SIP as well.

K. Mercury

On April 16, 2007, IDEQ submitted a new section IDAPA 58.01.01.199 requiring that no owner or operator shall construct or operate an electric generating unit, as defined in 40 CFR 60.24, with a potential to emit mercury emissions. The rule was subject to a public hearing on November 3, 2006, adopted by the Board of Environmental Quality on November 16, 2006, and became effective on March 30, 2007. While this rule is an important part of IDEQ's air program, IDAPA 58.01.01.199 is not related to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section

110 of the Act and, therefore, EPA is not taking any action on this provision.

L. Sulfur Content of Fuels

On June 8, 2009 IDEQ submitted revisions to IDAPA 58.01.01.725 thru 729 reorganizing and clarifying the existing rules for the sulfur content of fuels. The revisions were subject to a public hearing on June 10, 2008, adopted by the Board of Environmental Quality on October 9, 2008, and became effective on May 8, 2009. IDAPA 58.01.01.725 thru 729 were combined into a single section 58.01.01.725 Rules for the Sulfur Content of Fuels. Section 726 was revised to become paragraph 725.01 while retaining all of the relevant definitions specific to sections 725 thru 729. Sections 727, 728 and 729 were revised to become paragraphs 725.02. 725.03, and 725.04, while retaining all of the relevant provisions for residual fuel oils, distillate fuel oils and coal, respectively. The revisions simplify the existing regulations and we propose to approve these revisions into the SIP.

IV. EPA's Proposed Action

Consistent with the discussion above, EPA proposes to approve most of the submitted SIP provisions and to take no action on certain other provisions, as discussed below. This action will result in proposed changes to the Idaho SIP in 40 CFR part 52, subpart N.

A. Rules To Approve Into SIP

EPA proposes to approve into the SIP at 40 CFR part 52, subpart N, the Idaho regulations listed in Table 2. It is important to note that in those instances where IDEQ submitted multiple revisions to a single section of IDAPA 58.01.01, the most recent version of that section (based on state effective date) is proposed to be incorporated into the SIP since it supersedes all previous revisions.

TABLE 2—IDAHO REGULATIONS FOR PROPOSED APPROVAL

State citation	Title/subject	State effective date	Explanation
58.01.01—Rules for the Control of Air Pollution in Idaho			
006	General Definitions	4/11/2006	Except Section 006.66(b) (re: state air toxics in definition of "modification").
007	Definitions for the Purposes of Sections 200 through 225 and 400 through 461.	4/11/2006	
107	Incorporations by Reference	5/8/2009	Except Section 107.03(g) through (n) and (p).
200	Procedures and Requirements for Permits to Construct	4/2/2008	
133	Start-up, Shutdown and Scheduled Maintenance Requirements	4/11/2006	
134	Upset, Breakdown and Safety Requirements	4/11/2006	
135	Excess Emission Reports	4/11/2006	
155	Circumvention	4/11/2006	
201	Permit to Construct Required	7/1/2002	
202	Application Procedures	4/6/2005	
204	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas.	4/2/2008	
205	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	4/2/2008	
206	Optional Offsets for Permits to Construct	4/6/2005	
209	Procedures for Issuing Permits	4/11/2006	
213	Pre-Permit Construction	4/11/2006	
220	General Exemption Criteria for Permit to Construct Exemptions	4/11/2006	
222	Category II Exemptions	4/11/2006	
400	Procedures and Requirements for Tier II Operating Permits	7/1/2002	
401	Tier II Operating Permit	4/6/2005	Except 401.01.a (bubbles) and 401.04 (compliance date extension).
402	Application Procedures	7/1/2002	
404	Procedure for Issuing Permits	4/11/2006	
460	Requirements for Emission Reduction Credits	4/11/2006	
511	Applicability	4/11/2006	
512	Definitions	4/11/2006	
513	Requirements	4/11/2006	
560	Notification to Sources	4/11/2006	
561	General Rules	4/11/2006	
575	Air Quality Standards and Area Classification	4/11/2006	
581	Prevention of Significant Deterioration (PSD) Increments	4/11/2006	
679	Averaging Period	4/11/2006	
700	Particulate Matter Process Weight Limitations	5/3/2003	More recent state rule effective date.
725	Rules for Sulfur Content of Fuels	5/8/2009	

B. Rules on Which No Action Is Taken

58.01.01.008, Definitions for Purposes of Section 300 through 386

58.01.01.199, Electric Generating Unit Construction Prohibition

58.01.01.210, Demonstration of Preconstruction Compliance with Toxic Standards

58.01.01.225, Permit to Construct Processing Fee

58.01.01.228, Appeals

58.01.01.313, 317, 387–399, 395, Procedures and Requirements for Tier I Operating Permits

58.01.01.410, Appeals

58.01.01.175–181, Procedures and Requirements for Permits Establishing a Facility Emissions Cap
58.01.01.861, Standards of Performance of Hospital/Medical/Infectious Waste Incinerators

C. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.[7] Therefore, EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: March 3, 2010.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2010–5965 Filed 3–17–10; 8:45 am]

BILLING CODE 6560–50–P

[7] "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 268, and 270

[EPA–RCRA–2008–0678; FRL–9127–8]

RIN 2050–AG52

Hazardous Waste Technical Corrections and Clarifications Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing a number of technical changes that would correct or clarify several parts of the hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste generator requirements, the standards for owners and operators of hazardous waste treatment, storage and disposal facilities, the standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program and the hazardous waste permit program.

DATES: Written comments must be received by May 3, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0678, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov* and *oleary.jim@epa.gov*. Attention Docket ID No. EPA–HQ–RCRA–2008–0678.
- *Fax:* 202–566–9744. Attention Docket ID No. EPA–HQ–RCRA–2008–0678.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2008–0678. Please include a total of 2 copies.
- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2008–0678. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA

Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 HQ–Docket Center, Docket ID No. EPA–HQ–RCRA–2008–0678, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (MC:5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: 703/308–8827; or e-mail: *oleary.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes a number of technical changes that would correct or clarify several parts of the hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste generator requirements, the standards for owners and operators of hazardous waste treatment, storage and disposal facilities, the standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. In the "Rules and Regulations" section of this **Federal Register**, EPA is making these technical changes as a Direct Final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the Direct Final rule. If we receive no adverse comment on any of the individual technical changes we are promulgating today, we will not take further action on this proposed rule. If, however, we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that those paragraphs or amendments of the Direct Final rule for which the Agency received adverse comment will not take effect, and the reason for such withdrawals. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does This Action Apply to Me?

Entities potentially affected by this action include facilities subject to the RCRA hazardous waste regulations and States implementing the RCRA hazardous waste regulations.

III. Statutory and Executive Order Reviews

For a complete discussion of all the administrative requirements applicable to this action, see the Direct Final rule in the Rules and Regulations section of this **Federal Register**.

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 impact of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not create any new regulatory requirements, but rather corrects typographical errors and incorrect citations, and makes conforming changes (where they have not been made previously) to all applicable parts of the hazardous waste regulations.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–5697 Filed 3–17–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0011]
[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Berry Cave Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90–day finding on a petition to list the Berry Cave salamander (*Gyrinophilus gulolineatus*) as endangered under the Endangered Species Act of 1973, as amended. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species 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 Berry Cave salamander is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. 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 May 17, 2010. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may 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:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS-R4-ES-2010-0011 and follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R4-ES-2010-0011; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Mary E. Jennings, Field Supervisor, Cookeville Ecological Services Field Office, 446 Neal Street, Cookeville, TN, 38501; by telephone (931-528-6481); or by facsimile (931-528-7075). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Requested

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 Berry Cave salamander from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We seek information on:

(1) The species' 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 species, its habitat, or both.

(2) The factors that are the basis for making a listing 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.

(3) The potential effects of climate change on this species and its habitat.

If, we determine that listing the Berry Cave salamander is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the Berry Cave salamander, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection.

In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential for 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 species is proposed for listing, and why such habitat meets the requirements of the Act.

Please include sufficient information with your submission (such as scientific journal articles, other supporting publications, or data) 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. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. 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 will be available for public inspection on *http://www.regulations.gov*, or you may make an appointment during normal business hours, at the U.S. Fish and Wildlife Service, Cookeville Ecological Services Field 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 review the status of the species, which is subsequently summarized in our 12–month finding.

Petition History

On January 22, 2003, we received a petition dated January 15, 2003, from Dr. John Nolt, University of Tennessee – Knoxville, requesting that we list the Berry Cave salamander as endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required in 50 CFR 424.14(a). In a February 24, 2003, letter to the petitioner, we responded that we had reviewed the petition but that, due to court orders and settlement agreements for other listing and critical habitat actions that required nearly all of our listing and critical habitat funding for fiscal year 2003, we would not be able to further address the petition at that time.

Species Information

The Berry Cave salamander (*Gyrinophilus gulolineatus*) was recognized as a distinct aquatic cave-dependant taxon when it was originally described as a subspecies (*G. palleucus gulolineatus*) of the Tennessee cave salamander (*G. palleucus*) by Brandon (1965, pp. 346–352). The Tennessee cave salamander is found in eastern and middle Tennessee, northern Alabama, and northwestern Georgia. The Tennessee cave salamander is related to the spring salamander (*G. porphyriticus*); however, unlike the spring salamander, it is usually found in caves and is neotenic, meaning that it normally retains larval characteristics as an adult. Individuals occasionally metamorphose and lose their larval characters (Simmons 1976, p. 256; Yeatman and Miller 1984, pp. 305–306), and metamorphosis can be induced by subjecting them to hormones (Dent and Kirby-Smith 1963, p. 123).

Three taxonomic entities have been formally described within the Tennessee cave salamander species complex. The pale salamander (*G. p. palleucus*) is the most widely distributed member of the group and is found in middle Tennessee, northern Alabama, and northwestern Georgia. The Big Mouth Cave salamander (*G. p. necturoides*) is restricted to one cave in middle Tennessee, and the Berry Cave salamander has been recorded from five locations in eastern Tennessee.

The Berry Cave salamander is differentiated from other members of the group by a distinctive dark stripe on the upper portion of the throat, a wider head, a flatter snout, and possibly larger size (Brandon 1965, p. 347). Based on these differences and its apparent isolation from other members of the group, Collins (1991, p. 43) recommended that this subspecies be recognized as a distinct species (*G. gulolineatus*).

The Berry Cave salamander is restricted to the Ridge and Valley Physiographic Province of eastern Tennessee. It has been reported from Berry Cave, which is located south of Knoxville, Tennessee; from Mud Flats, Meades Quarry, and Cruze Caves in Knoxville; and from an unknown cave in the Athens, Tennessee, area. The Athens record is based solely on three specimens collected in a roadside ditch that are presumed to have washed out of a cave during flooding (Brandon 1965, pp. 348–349). The species has not been observed in the Athens area since 1953.

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 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 making this 90–day finding, we evaluated whether information regarding threats to the Berry Cave salamander, 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.

A. *The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Information Provided in the Petition

The petitioner stated that the Berry Cave salamander is known from only four populations, all in eastern Tennessee, and that all but one of these populations are immediately threatened or already extirpated. These four locations include Berry Cave in Roane County; Mud Flats Cave in Knox County; an unknown location in the

town of Athens, McMinn County; and Meades Quarry/Cruze Cave complex in South Knoxville, Knox County (treated as two separate localities in discussion above). The petitioner stated that Berry Cave was the only location containing a pure and unthreatened population of the species.

The petitioner stated that the only record of Berry Cave salamanders from the town of Athens was based on a 1953 collection of three specimens from a roadside ditch that was flooded by Oostanaula Creek. These specimens were collected near a hole in the ground, presumably an opening into a cave out of which the animals had been washed, but the exact location was unknown. The petitioner concluded that this population, if it still exists, is potentially under pressures from development and pollution that affected other sites in urban areas.

The petitioner also stated that the habitat in Mud Flats Cave was degraded several years prior to the petition date, due to siltation from a nearby housing development, and that efforts to find the Berry Cave salamander subsequent to this development have failed, suggesting this population might be extirpated. The petitioner also asserted that if the species has survived at this location, it is subjected to continued pollution and siltation from this development.

In addition, the petitioner asserted that Meades Quarry Cave and Cruze Cave are connected, forming one system. Evidence of a connection included: (1) Information on the position of Meades Quarry Cave, which is thought to extend southwest in the general direction of Cruze Cave; (2) the location of both caves within the Holston Formation, a long band of relatively soluble marble-like limestone known as "Tennessee marble" that is found in an area only a few hundred yards or meters wide; and (3) genetic studies that suggest that salamanders from both caves are part of the same population. The petitioner stated that if the two caves are part of the same system, the proposed James White Parkway, which would be located midway between the entrance to Meades Quarry Cave and the entrance to Cruze Cave, must pass directly over the system and constitutes a significant threat to the Meades Quarry/Cruze Cave habitat of the Berry Cave salamander. In addition, the petitioner stated that a proposed interchange for the James White Parkway would be located on a hillside immediately above a sinkhole complex that lies in the Holston formation, approximately midway between the entrances to Cruze and Meades Quarry Caves. The sinkhole is presumably connected to this cave system. The petitioner concluded that the proposed construction project and resulting road would threaten the Berry Cave salamander population by disrupting the food chain upon which the species depends, increasing siltation in the cave system, and altering the hydrologic and thermal regimes of the stream system. Other road-related impacts to this site that the petitioner stated would threaten the species either directly or by reducing its prey included filling of cave passages with concrete, collapse of cave passages, pollution from toxic runoff, and toxic chemical spills.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in Service files supports the petitioner's claim that the Berry Cave salamander is known from only 4 populations in eastern Tennessee (Wynn and Jacobs 1988, pers. comm.). In addition, we have no information in our files indicating that Berry Cave salamanders have been collected from the vicinity of Athens, Tennessee, since the initial discovery there in 1953.

The source of much of the information included in the petition was notes taken by the petitioner during a meeting about the Berry Cave salamander and related taxa within the *G. palleucus* species complex, which was held by the Service on December 10, 2002. Several persons knowledgeable about the distribution, status, and ongoing taxonomic studies of the species were present at that meeting. During this meeting, Ron Caldwell reported that he visited Mud Flats Cave in 1994 and did not observe any salamanders. At the time of the visit, the mud in the cave was hip deep whereas the mud was only ankle deep during prior visits he made to the cave. He also reported that a housing development had filled in a sinkhole overlaying the cave and that lawn runoff from the development and from a golf course may be impacting the cave (Caldwell 2002, pers. comm.).

If the James White Parkway is constructed as the petitioner describes, the habitat of the Berry Cave salamander may be negatively impacted. Construction of the parkway has the potential to cause erosion of surrounding land and cause excessive siltation to enter the Meades Quarry/Cruze Cave complex, which in turn could cause a disruption in the amount of organic matter (salamander food source) entering the cave complex. It could also cause fluctuations in water flow through the cave system, fluctuations in temperature of water entering the cave system, and an increase in pollution from toxic runoff. We believe that these factors could lead to a decline in the population in the Meades Quarry/Cruze Cave complex, given the apparent decline at Mud Flats Cave in the face of similar threats, primarily excessive siltation. Because the Berry Cave salamander is restricted to no more than four localities, one of which might already be extirpated (see discussion above concerning Mud Flats Cave), we believe the petitioner presents substantial information to suggest the species could be placed at risk of becoming extinct in the foreseeable future.

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to present or threatened destruction, modification, or curtailment of the species' habitat or range. Specifically, the petitioner's claims that (1) the Mud Flats Cave population of Berry Cave salamander may be extirpated and that habitat in this location has been modified by siltation and other development-related threats, and (2) the Meades Quarry/Cruze Cave complex may be threatened by proposed road development in the vicinity of the cave, indicate that the petitioned action may be warranted.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petition presents no substantial scientific or commercial information, nor do we have such information in our files, indicating that the petitioned action may be warranted due to threats from overutilization for commercial, recreational, scientific, or educational purposes. However, we will evaluate all factors, including threats from overutilization for commercial, recreational, scientific, or educational purposes, when we conduct our status review.

C. *Disease or Predation*

The petition presents no substantial scientific or commercial information, nor do we have such information in our files, indicating that the petitioned action may be warranted due to disease or predation. However, we will evaluate all factors, including threats from disease and predation, when we conduct our status review.

D. *The Inadequacy of Existing Regulatory Mechanisms*

The petition presents no substantial scientific or commercial information, nor do we have such information in our files, indicating that the petitioned action may be warranted due to threats resulting from the inadequacy of existing regulatory mechanisms. However, we will evaluate all factors, including the inadequacy of existing regulatory mechanisms when we conduct our status review.

E. *Other Natural or Manmade Factors Affecting the Species' Continued Existence*

Information Provided in the Petition

The petitioner stated that specimens so far collected from the Meades Quarry/Cruze Cave complex have hybridized with the spring salamander (*Gyrinophilus porphyriticus*), which occurs near the cave entrances.

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner's claims concerning hybridization are supported by correspondence in our files, which indicate that, based upon electrophoretic data, populations in Meades Quarry and Cruze Caves hybridize with spring salamanders (Wynn and Jacobs 1988, pers. comm.) While this may be a natural occurrence that has gone on for quite some time, there is a possibility that unique Berry Cave salamander genetic material is being lost through interbreeding with spring salamanders, threatening the genetic integrity of the species.

Therefore, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to the potential threat to the genetic integrity of two of the four known populations of Berry Cave salamander by hybridization with the spring salamander.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the Berry Cave salamander may be warranted. This finding is based on the possibility of habitat loss and degradation from development, which has been implicated in the reduction or possible loss of Berry Cave salamanders in Mud Flats Cave. It is also based on the potential threat of the loss of genetic diversity due to interbreeding between Berry Cave and spring salamanders in Meades Quarry and Cruze caves. Because we have found that the petition presents substantial information indicating that listing the Berry Cave salamander may be warranted, we are initiating a status review to determine whether listing the Berry Cave salamander under the Act is warranted.

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 Cookeville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Cookeville Ecological Services Field 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 9, 2010.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–5966 Filed 3–17– 10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
Vol. 75, No. 52
Thursday, March 18, 2010

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: U.S. Department of Agriculture, National Appeals Division.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the U.S. Department of Agriculture, National Appeals Division's to request an extension for and revision to a currently approved information collection for Customer Service Survey.

DATES: Comments on this notice must be received by May 17, 2010 to be assured of consideration.

Additional information or Comments: Contact Jerry Jobe, U.S. Department of Agriculture, National Appeals Division, 3101 Park Center Drive, Suite 1100, Alexandria, VA, 22302, 703–305–2514, 703.305.1496 (fax).

SUPPLEMENTARY INFORMATION:

Title: National Appeals Division Customer Service Survey.

OMB Number: 0503–0007.

Expiration Date of Approval: March 31, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: NAD proposes to extend and revise its currently approved information collection survey. This revision will include collecting information pertaining to its Public Awareness and Quality Control Programs.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Appellants, producers, and other USDA agencies.

Estimated Number of Respondents: 1176.

Estimated Number of Responses per Respondent: One (1).

Estimated Total Annual Burden on respondents: 388.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jerry L. Jobe, U.S. Department of Agriculture, National Appeals Division, 3101 Park Center Drive, Suite 1100, Alexandria, VA 22302, 703–305–2514, 703–305–1496 (fax). All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Roger Klurfeld,

Director, National Appeals Division.

[FR Doc. 2010–5938 Filed 3–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 12, 2010.

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

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

Rural Housing Service

Title: Section 515 Multi-Family Housing Preservation and Revitalization Restructuring Demonstration Program (MPR)

OMB Control Number: 0575–0190.

Summary of Collection: The Agriculture, Rural Development, Food and Drug

Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97) provided funding for, and authorizes the Rural Housing Service (RHS) to conduct a demonstration program for the preservation and revitalization of the Section 515 multi-family housing portfolio. The Multi-Family Housing Preservation and Revitalization Restructuring Demonstration Program will utilize numerous authorities to provide the financial assistance necessary to revitalize rental properties

and preserve them for affordable housing.

Need and Use of the Information: RHS will use the collected information to evaluate the strengths and weaknesses to which the proposal concept possesses or lacks to select the most feasible proposals that will enhances the Agency's chances in accomplishing the demonstration objective. The information will be utilized to sustain and modify RHS' current policies pertaining to revitalization and preservation of affordable rental housing in rural areas.

Description of Respondents: Individuals or Households; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 2,420.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 2,720.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–5876 Filed 3–17–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 12, 2010.

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

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

Forest Service

Title: Public Support for Fuel Reduction Policies: Multimedia versus Printed Materials.

OMB Control Number: 0596–0203.

Summary of Collection: This information collection is being undertaken to solicit information on public support of two fuel reduction programs; prescribed burning and mechanical treatment. To gather the information needed for the study, a stratified random sample of California and Montana residents will be contacted by telephone through a random-digit dialing process. Those who agree to participate in the study will be asked an introductory set of questions to determine their pre-existing knowledge of fuels reduction treatments. This study will provide credible information to fire managers to plan fuels reduction treatment programs acceptable to the communities. In addition it will allow for the testing of whether a self-administered video survey elicits more support for prescribed burning and mechanical fuels treatment programs than a paper-based survey. The Healthy Forests Restoration Act (Pub.L. 108–148) gives the Forest Service the authority to collect this information.

Need and Use of the Information: Researchers will evaluate the responses of California and Montana residents to different scenarios related to fire hazard reduction program. Information collected will help natural resource and fire managers to better understand the public's opinions on fuels reduction activities and what type of media could be more effective in conveying information to the public. Without the information the agencies with fire protection responsibilities will lack the capability to evaluate the general public understanding of proposed fuels reduction projects and programs or their willingness-to-pay for implementing such programs.

Description of Respondents: Individuals or households.

Number of Respondents: 1,400.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 617.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–5863 Filed 3–17–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision an extension for a currently approved information collection in support of the program for 7 CFR Part 3550, Direct Single Family Housing Loans and Grants and its accompanying Handbooks.

DATES: Comments on this notice must be received by May 17, 2010 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Shantelle C. Gordon, Program Analyst, USDA Rural Housing Service, Single Family Housing, 1400 Independence Avenue, SW., STOP 0783, Washington, DC 20250–0783, Telephone: (202) 205–9567, Fax: (202) 720–2232. E-mail: *shantelle.gordon@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub.L. 104–13) required that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for approval. *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the 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. Comments may be sent to: Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Direct Single Family Housing Loans and Grants.

OMB Number: 0575–0172.

Expiration Date of Approval: August 31, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Rural Housing Service (RHS), through its direct single family housing loan and grant programs, provides financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe and sanitary housing to eligible individuals in rural areas. To assist a customer, they must provide the Agency with a standard housing application (used by government and private lenders), and provide documentation to support the same. Documentation includes verification of income, financial information on assets and liabilities, etc. The information requested is comparable to that required by any private mortgage lender. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as one percent. The amount of subsidy is based upon the customer's household income. After receipt of this information, if the customer obtains a loan from RHS, they must update income information on an annual basis to renew the payment subsidy. The aforementioned information required by RHS is vital to be able to process applications for RHS assistance and make prudent loan underwriting and program decisions. It includes borrower financial information such as household income, assets and liabilities and monthly expenses. Without this information, the Agency is unable to determine if a customer would qualify for any services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes. The Agency also encourages its customers to leverage our mortgage financing with that of other lenders to assist as many customers as possible within our limited resources. In many cases, another lender will leverage and participate with RHS in assisting the customer. In these cases, RHS and the other lender share documentation, with the customer's consent, to reduce duplication. Through our work with participating lenders, the Agency keeps abreast of information required by other lenders to ensure that RHS is not requiring unnecessary information. The Agency continually strives to ensure that information collection burden is kept to a minimum.

As mentioned, these loans are made directly by the Agency. RHS also services these loans for their term (30, 33, or 38 years) and provides tools to assist the customer in becoming a successful homeowner. As discussed, payment subsidies are renewed on an annual basis. In addition, the Agency provides credit counseling and other services to its customers in an effort to assist them in becoming successful. The Agency offers many servicing tools including a moratorium (stop) on payments, modifications to payment subsidies to reflect changes in the customer's income, loan re-amortization, payment workouts, etc. To obtain this assistance, the Agency must require certain information such as updated income and financial information, etc., to ensure the customer qualifies for the assistance, and is provided with the correct benefits based upon their circumstances.

Direct Single Family Housing loans are only provided to customers who cannot obtain other credit for their housing needs and are required by statute to refinance with another lender when they are financially able. To ensure the Agency meets its statutory responsibilities, existing customers may be requested to submit updated income and financial information for the Agency to make a determination as to whether they can "graduate" to other credit. In addition, should a customer default on a loan which results in liquidation, the Agency needs updated income and financial information to settle any outstanding indebtedness.

With the implementation of EGOV in June 2002, individuals are able to make application on line. We have 64 eForms which the public can access and print for personal use. RHS is committed to automation and reducing the burden upon the public.

Estimate of Burden: Public burden for this collection of information is estimated to average .30 hours per response.

Respondents: Approximately 33,000 applicants seeking direct single family housing loans and grants from the Agency and approximately 292,000 existing customers who have active loans and grants under the Section 502 and 504 programs.

Estimated Number of Respondents: 225,586.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Responses: 1,435,263.

Estimated Total Annual Burden on Respondents (hours): 428,461.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch at (202) 692–0226.

Dated: March 12, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–5881 Filed 3–17–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Rural Housing Loans.

DATES: Comments on this notice must be received by May 17, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Debra A. Terrell, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, Rural Housing Service, Stop 0784, 1400 Independence Ave., SW., Washington, DC 20250–0784; *Telephone:* (202) 720–1452; *E-mail: debra.terrell@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rural Housing Loans.

OMB Number: 0575–0078.

Expiration Date of Approval: March 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under Section 517(d) of Title V of the Housing Act of 1949, as amended, to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas by eligible recipients.

The Act also authorizes the Secretary to pay the holder of a guaranteed loan the difference between the rate of interest paid by the borrower and the market rate of interest.

The purpose of the program is to assist low and moderate income individuals and families acquire or construct a single family residence in a rural area with loans made by private lenders. Eligibility for this program includes low and moderate income families or persons whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary.

The Guaranteed Rural Housing (GRH) program was authorized under the Cranston-Gonzalez National Affordable Housing Act, and the Agency issued a final rule implementing the GRH program on April 17, 1991, before departmental reorganization. The program began as a pilot program in 20 States on May 17, 1991. In 1992, the GRH program was offered on a nationwide basis. During the implementation process, the Agency looked for ways to improve the program and make it more user-friendly.

The Agency recognized the need to make its program even more compatible with the existing structure of the mortgage lending community. On May 22, 1995, the Agency published a final rule incorporating the needed changes to encourage greater participation by lenders and the secondary market for mortgage loans.

The information requested by the Agency includes borrower financial information such as household income, assets and liabilities, and monthly expenses. All information collected is vital for the Agency to determine if borrowers qualify for and assure they receive all assistance for which they are eligible. Information requested on lenders is required to ensure lenders are eligible to participate in the GRH program. Lender requirements are in compliance with OMB Circular A–129.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.44 hours per response.

Respondents: Individuals or households and business or other for-profits.

Estimated Number of Respondents: 33,393.

Estimated Number of Responses per Respondent: 8.7.

Estimated Number of Responses: 293,053.

Estimated Total Annual Burden on Respondents: 204,081 hours.

Copies of this information collection can be obtained from Linda Watts-Thomas, Regulations and Paperwork Management Branch, at (202) 692–0226.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the 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.

Comments may be sent to Linda Watts-Thomas, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 12, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–5883 Filed 3–17–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Intent To Hold Public Forums To Solicit Feedback From the Public Regarding the Section 523 Mutual Self-Help Housing Program; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service, USDA published a document in the **Federal Register** of February 2, 2010, concerning upcoming public forums and request for comments regarding the Section 523 Mutual Self-Help Housing Program. There has been a change in one of the forum dates.

FOR FURTHER INFORMATION CONTACT: Debra S. Arnold, *debra.arnold@wdc.usda.gov* or (202) 720–1366.

Correction

In the **Federal Register** of February 2, 2010, in FR Doc. 2010–2067, on page 5281, in the third column, correct the date for Mississippi to read March 29, 2010.

Dated: March 10, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–5895 Filed 3–17–10; 8:45 am]

BILLING CODE 3410–XV–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, March 29–31, 2010, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, March 29, 2010

10:30–11 a.m. Budget Committee.

11–Noon Planning and Evaluation Committee.

1:30–3:30 p.m. Ad Hoc Committee Meetings (Closed to the Public).

3:30–4:30 p.m. Technical Programs Committee.

Tuesday, March 30, 2010

9:30–2:30 p.m. Ad Hoc Committee Meetings, Continued (Closed to the Public).

2:30–3:30 p.m. Frontier Issues Ad Hoc Committee.

3:30–4:30 p.m. Accessible Design in Education Ad Hoc Committee.

Wednesday, March 31, 2010

9:30–11 a.m. Briefing on Health Information Technology.

1:30–3 p.m. Board Meeting.

ADDRESSES: All meetings will be held at the Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on Wednesday, March 31, the Access Board will consider the following agenda items:

- Approval of the draft January 13, 2010 meeting minutes.
- Budget Committee Report.
- Planning and Evaluation Committee Report.
- Technical Programs Committee Report.
- Ad Hoc Committee Reports.
- Election of Officers.
- Executive Director's Report.
- ADA and ABA Guidelines; Federal Agency Updates.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *http://www.access-board.gov/about/policies/fragrance.htm* for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2010–5891 Filed 3–17–10; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Hearing on the Department of Justice's Actions Related to the New Black Panther Party Litigation and Its Enforcement of Section 11(b) of the Voting Rights Act

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of hearing.

DATES AND TIME: Friday, April 23, 2010; 9:30 a.m. EDT.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, 42 U.S.C. 1975a, and 45 CFR 702.3., that public hearings before the U.S. Commission on Civil Rights will commence on Friday, April 23, 2010, beginning at 9:30 a.m. EDT in Washington, DC at the Commission's offices located at 624 Ninth Street, NW., Room 540, Washington, DC 20425, and continue until completed. If on April 23, 2010, the operating status of the Federal Government in the Washington, DC area is closed or the hearing is otherwise not initiated on said date, the hearing will be rescheduled for May 14, 2010 at the same time and location. An executive session not open to the public may be convened at any appropriate time before or during the hearing.

The purpose of this hearing is to collect information within the jurisdiction of the Commission, under 42 U.S.C. 1975a, related particularly to the Department of Justice's actions in the New Black Panther Party Litigation and enforcement of Section 11(b) of the Voting Rights Act.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR 701.2. The Commission is an independent bipartisan, fact finding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The Commission has broad authority to investigate allegations of voting irregularities even when alleged abuses do not involve discrimination.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the scheduled date of the hearing at 202–376–8105. TDD: (202) 376–8116.

Dated: March 12, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–5884 Filed 3–17–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

DATE AND TIME: Friday, March 26, 2010; 11:30 a.m. EDT.

PLACE: Via Teleconference.

Public Dial In: 1–800–597–7623. Conference ID # 63007474.

Meeting Open to Public

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda

II. Program Planning

- Approval of Letter to Youngstown, Ohio City Council Members re Racially Bifurcated Test Results in the Police and Fire Departments
- Update on Status of 2010 Enforcement Report—Some of the discussion of this agenda item may be held in closed session.
- Update on Status of Title IX Project—Some of the discussion of this agenda item may be held in closed session.

III. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: March 16, 2010.

Martin Dannenfelser,

Staff Director.

[FR Doc. 2010–6135 Filed 3–16–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[Docket No. 100226117–0125–01]

Privacy Act of 1974; Altered System of Records

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice of Amendment, Privacy Act System of Records; COMMERCE/CENSUS–10 and 5, combining the American Community Survey, and the Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census, into the COMMERCE/CENSUS–5, Decennial Census Program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Title 5 United States Code (U.S.C.) 552A(e)(4) and (11); and Office of Management and Budget (OMB) Circular A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the

Department of Commerce is issuing notice of intent to update the system of records titled COMMERCE/CENSUS–5, Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census, by combining the system of records under COMMERCE/CENSUS–10 American Community Survey with the updated COMMERCE/CENSUS–5 Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census system and renaming the newly combined system notice to COMMERCE/CENSUS–5, Decennial Census Program. Accordingly, the COMMERCE/CENSUS–5, Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census system notice published in the Federal Register on February 21, 2006 (71 FR 8839) is amended as below. The system of records entitled COMMERCE/CENSUS–10, American Community Survey, published in the **Federal Register** on January 17, 2007 (72 FR1979), will be abolished upon final publication of the **FEDERAL REGISTER** notice for the newly amended and renamed system of records entitled COMMERCE/CENSUS–5, Decennial Census Program. We invite public comment on the system amendment announced in this publication.

DATES: *Comment Date:* To be considered, written comments on the proposed amended system must be submitted on or before April 19, 2010.

Effective Date: Unless comments dictate otherwise, the amendments will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register.**

ADDRESSES: Please address comments to: Chief Privacy Officer, Privacy Office, Room HQ–8H168, U.S. Census Bureau, Washington, DC 20233–3700.

SUPPLEMENTARY INFORMATION: Delete and replace with the following language: "This amendment combines two systems into one, thereby integrating the mandatory data collections required for the decennial census program. This includes the detailed characteristics information now collected on an ongoing basis by the American Community Survey as well as the decennial collection of the basic characteristics information required for apportionment and redistricting counts. Therefore, this amendment updates the purpose of the system, categories of records in the system, policies and practices for retrieving, retaining, and disposing of records in the system, and other administrative information. This system is renamed "Decennial Census Program" and includes the information collected by the American Community Survey, as well as information collected during the Decennial Census of Population and Housing. The American Community Survey is an ongoing survey with an annual sample of approximately 3 million residential addresses in the U.S.; approximately 36,000 residential addresses in Puerto Rico; approximately 20,000 group quarters facilities in the U.S.; and approximately 100 group quarters facilities in Puerto Rico. The Decennial Census of Population and Housing is one of the few federal activities for which authority rests in the Constitution (Article 1, Section 2). Decennial census data collection processes touch the lives of every person in the United States. Decennial census data products provide the basis for apportioning among the states the seats in the U.S. House of Representatives, for developing the districts that members of Congress, state legislators, and other elected individuals represent, for the distribution of billions of dollars each year to governmental entities at all levels, and for untold numbers of governmental and business decisions.

As an example of the scope of the Decennial Census of Population and Housing, in 2010, the Census Bureau will be contacting over 130 million addresses in order to enumerate over 300 million people in an increasingly more complex demographic and technological environment. The Census Bureau conducts a census of population and housing, and disseminates the data to the President, the states, and to the American people. The 2010 Census will cover the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, the Pacific Island Area of American Samoa, and Federally-Affiliated Americans Overseas. The Census Day for the 2010 Census will be April 1, 2010, have a boundary reference date of January 1, 2010, apportionment counts will be delivered to the President by December 31, 2010, and redistricting counts will be delivered to the states by April 1, 2011."

COMMERCE/CENSUS–5

SYSTEM NAME:

Delete and replace with the following language: "COMMERCE/CENSUS–5, Decennial Census Program"

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Delete and replace with the following language: "U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233–8100; Bureau of the Census, Bowie Computer Center, 17101 Medford Boulevard, Bowie, Maryland 20715."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete and replace with the following language: "All persons surveyed during the ongoing American Community Survey and all persons counted during the Decennial Census of Population and Housing as well as all persons counted in any pilot census tests of procedures related to the American Community Survey and the Decennial Census of Population and Housing are covered by the system. Participation in the decennial censuses (the American Community Survey and the Decennial Census of Population and Housing) as well as all of the pilot censuses is mandatory."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete and replace with the following language: "Records collected by the American Community Survey and its pilot censuses obtain population information such as name, address, telephone number, age, sex, race, Hispanic origin, relationships, housing tenure, number of persons in the household, as well as more detailed information on topics such as, marital status and history, fertility, income, employment, education, health insurance or health coverage plans, disability, grandparents as care-givers, and military status and history. In addition, the American Community Survey and its pilot censuses contain housing information on topics such as year built, structure description, uses, features, amenities, and number of rooms, utilities, purchase type (e.g. mortgage or deed of trust), and financial characteristics (e.g. home value, property taxes, etc.).

Records collected during the Decennial Census of Population and Housing contain population information such as name, address, telephone number, age, sex, race, Hispanic origin, relationship, housing tenure, number of persons in the household, number of persons in the household not permanent residents, and whether residents sometimes live somewhere else.

In accordance with 13 U.S.C., Section 6(c), information in the American Community Survey and Decennial Census of Population and Housing may also come from administrative records from federal, states, counties, cities, or other units of government, or from

private persons and agencies. For instance, external sources used for information include: the U.S. Department of Defense and the U.S. Office of Personal Management for enumeration of federally affiliated Americans overseas; tribal, State, and local governments for service-based enumeration of persons without permanent shelter; and the U.S. Postal Service for address and road updates.

Pilot census records may contain information similar to that included in the American Community Survey and Decennial Census of Population and Housing."

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with the following language: "13 U.S.C., Sections 141 and 193."

PURPOSE(S):

Delete and replace with the following language: "The purpose of this system is to collect statistical information from respondents for the Decennial Census Program, which includes both the American Community Survey and the Decennial Census of Population and Housing, in order to provide key infrastructure data for the nation. The American Community Survey, the Decennial Census of Population and Housing, and pilot census records are maintained to conduct research and analysis with survey and administrative data for projects as authorized by Title 13 of the U.S.C., Sections 141 and 193 and the U.S. Census Bureau; and to undertake methodological evaluations and enhancements leading to improved data collection and quality control studies. Also, information collected by the Decennial Census of Population and Housing is used to provide official census transcripts of the results to the named person(s), their heirs, or legal representatives as authorized by Title 13 of the U.S.C., Section 8 as described in the system of records notice COMMERCE/CENSUS–6, Population Census Personal Service Records for 1910 and All Subsequent Decennial Censuses (this does not apply to the American Community Survey and pilot census records)."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete and replace with the following language: "These records are maintained and used solely for statistical purposes and are confidential under Title 13 of the U.S.C., Sections 9 and 214. Publications do not contain data that could identify any particular household or individual."

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Delete and replace with the following language: "None."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete and replace with the following language: "Records will be stored in a secure computerized system and on magnetic media; output data will be either electronic or paper copies. Source data sets containing personal identifiers will be maintained in a secure restricted-access environment."

RETRIEVABILITY:

Delete and replace with the following language: "Information for the Decennial Census of Population and Housing and for the American Community Survey may be retrieved by name and address. Additionally, information may be retrieved only by authorized access and in accordance with other security controls."

SAFEGUARDS:

Delete and replace with the following language: "The U.S. Census Bureau is committed to respecting respondent privacy and protecting confidentiality. Through the Data Stewardship Program, we have implemented management, operational, and technical controls and practices to ensure high-level data protection to respondents of our census and surveys: (1) All U.S. Census Bureau sworn individuals are subject to the restrictions, penalties, and prohibitions of Title 13 of the U.S.C., and all employees are annually certified through training concerning confidentiality of data; (2) data sets released by the U.S. Census Bureau have been subjected to and have successfully met criteria established by an internal Disclosure Review Board to ensure no personally identifiable data are released; (3) an unauthorized browsing policy protects respondent information from casual or inappropriate use by any person with access to Title 13 protected data; (4) all computer systems that maintain sensitive information are in compliance with the Federal Information Security Management Act, which includes auditing and controls over access to restricted data; and (5) paper copies that contain sensitive information are stored in secure facilities in a locked drawer or file cabinet behind a locked door."

RETENTION AND DISPOSAL:

Delete and replace with the following language: "American Community Survey, Decennial Census of Population and Housing, and pilot census respondent data, including personally identifying data, are captured as images suitable for computer processing. Original data sources are destroyed, according to the disposal procedures for Title 13 records, after confirmation of successful data capture and data transmission to U.S. Census Bureau headquarters. For the American Community Survey, personally identifying data are scheduled for permanent retention. For the Decennial Census of Population and Housing, a unified record of individual response, including all names and other written entries provided by the respondent, and all associated address and geographic information for each housing unit or person living in group quarters is scheduled for permanent retention to meet the National Archives and Records Administration (NARA) archiving requirements. Pilot data collections, data capture, and data processing records are destroyed within two years or when no longer needed for program or evaluation purposes, whichever is later. These requirements are laid out in the Records Schedule established in conjunction with NARA (Title 44, U.S.C., Section 2108).

SYSTEM MANAGER AND ADDRESS:

Delete and replace with the following language: "Associate Director for Decennial Census, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233–8000."

NOTIFICATION PROCEDURE:

Delete and replace with the following language: "None."

RECORD ACCESS PROCEDURES:

Delete and replace with the following language: "None."

CONTESTING RECORD PROCEDURES:

Delete and replace with the following language: "None."

RECORD SOURCE CATEGORIES:

Delete and replace with the following language: "Individuals covered by selected administrative records systems and Census Bureau censuses and surveys."

EXEMPTIONS CLAIMED FOR SYSTEM:

Delete and replace with the following language: "Pursuant to 5 U.S.C. 552a (k)(4), this system of records is exempted from the notification, access, and contest requirements of the agency procedures (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f)). This exemption is applicable because the data are maintained by the U.S.

Census Bureau solely as statistical records, as required under Title 13 U.S.C., and are not used in whole or in part in making any determination about an identifiable individual. This exemption is made in accordance with the Department's rules which appear in 15 CFR part 4 subpart B and in accordance with agency rules published in the rules section of this **Federal Register.**"

Dated: March 12, 2010.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 2010–5943 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; MAHAN AIRWAYS; Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran, Respondent; Order Renewing Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2009) ("EAR" or the "Regulations"), I hereby grant the request of the Bureau of Industry and Security ("BIS") to renew for 180 days the Order Temporarily Denying the Export Privileges of Respondent Mahan Airways ("TDO"), as I find that renewal of the TDO is necessary in the public interest to prevent an imminent violation of the EAR.

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement ("Assistant Secretary"), signed a TDO denying Mahan Airways' export privileges for a period of 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd. (all of the United Kingdom and hereinafter collectively referred to as the "Balli Group Respondents"), as well as Blue Airways (of Yerevan, Armenia). The TDO was issued *ex parte* pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the **Federal Register.** On July 18, 2008, in accordance with Section 766.23 of the Regulations, Assistant Secretary Jackson issued an Order adding Blue Airways FZE and Blue Airways, both of Dubai, United Arab Emirates ("the UAE"), to the TDO as persons related to Blue Airways of Armenia (along with Blue Airways FZE and Blue Airways of the UAE, hereinafter collectively referred to as the Blue Airways Respondents).[1] On September 17, 2008, Assistant Secretary Jackson renewed the TDO for an additional 180 days in accordance with Section 766.24 of the Regulations, via an order effective upon issuance, and on March 16, 2009, the TDO was similarly renewed by then-Acting Assistant Secretary Kevin Delli-Colli.[2] On September 11, 2009,[3] Acting Assistant Secretary Delli-Colli renewed the TDO for an additional 180 days against Mahan Airways. The TDO was not renewed against the Balli Group Respondents or the Blue Airways Respondents.

On February 17, 2010, BIS, through its Office of Export Enforcement ("OEE"), filed a written request for renewal of the TDO against Mahan Airways for an additional 180 days, and served a copy of its request on the Respondent in accordance with Section 766.5 of the Regulations. No opposition to renewal of the TDO has been received from Mahan Airways.

II. Discussion

A. Legal Standard

Pursuant to Section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an "imminent" violation of the EAR as defined in Section 766.24. "A violation may be 'imminent' either in time or in degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that "the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and TDO renewals in this matter and the evidence developed over the course of this investigation indicating Mahan Airways' clear willingness to continue to disregard U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s ("Aircraft 1–3"), items subject to the EAR and classified under Export Control Classification Number ("ECCN") 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s ("Aircraft 4–6") to Iran.

As more fully discussed in the September 17, 2008 TDO Renewal Order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[4] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. In addition, as more fully discussed in the March 16, 2009 Renewal Order, in October 2008, Mahan Airways caused Aircraft 1–3 to be deregistered from the Armenian civil aircraft registry and subsequently registered the aircraft in Iran. The aircraft were relocated to Iran and were issued Iranian tail numbers, including EP–MNA and EP–MNB, and continued to be operated on Mahan Airways' routes in violation of the Regulations and the TDO.

Moreover, as discussed in the September 11, 2009 Renewal Order, Mahan Airways continued to operate Aircraft 1–3 in violation of the Regulations and the TDO, and also committed an additional knowing and willful violation of the Regulations and the TDO when it negotiated for and acquired an additional U.S.-origin

[1] The Related Persons Order was published in the **Federal Register** on July 24, 2008.

[2] The September 17, 2008 Renewal Order was published in the **Federal Register** on October 1, 2008. The March 16, 2009 Renewal Order was published in the **Federal Register** on March 25, 2009.

[3] The September 11, 2009 Renewal Order was published in the **Federal Register** on September 18, 2009.

[4] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

aircraft. The additional aircraft was an MD–82 aircraft, which was subsequently painted in Mahan Airways livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

OEE seeks renewal of the TDO against Mahan Airways based on its participation in the violations discussed in the initial and renewed TDOs and Mahan Airways' continued defiance of the Regulations and the TDO by operating at least two of Aircraft 1–3 on its routes in and out of Iran since the September 11, 2009 Renewal Order, and the third of those aircraft during part of that time period.[5] OEE also notes that in addition to Mahan Airway's on-going violations of the Regulations and TDO, a United Kingdom court found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. See Exhibit 3 to OEE's Renewal Request. Mahan Airways and the Balli Group Respondents have been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. OEE's submission also includes a copy of a letter from Mahan Airways' Chairman to the U.K. court dated January 12, 2010, in which Mahan Airways indicates, inter alia, that it opposes U.S. Government actions against Iran, that it was continuing to operate the aircraft on its routes in and out of Tehran (and had 158,000 "forward bookings" for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft. *See* Exhibit 4 to OEE's Renewal Request.

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the record here, I find that violations of the Regulations have occurred and continue to occur involving the unlicensed re-export of U.S.-origin Boeing 747s presently under Mahan Airways' possession and control. The aircraft are currently located in Iran and are registered and/or operated by Mahan Airways in violation of the Regulations and the most recent Renewal Order dated September 11, 2009. Mahan Airways' continued course of conduct illustrates its refusal to comply with the TDO or U.S. export control laws.[6]

I find that the evidence presented by BIS convincingly demonstrates that Mahan Airways has repeatedly violated the EAR and the TDO and that such knowing violations have been significant, deliberate and covert, and that there is a likelihood of future violations. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should continue to cease dealing with Mahan Airways in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to prevent imminent violation of the EAR.

Accordingly, I find pursuant to Section 766.24, that renewal of the TDO for 180 days against Mahan Airways is necessary in the public interest to prevent an imminent violation of the EAR.

III. Order

It is therefore ordered:

First, that the Respondent, MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp.Way, Tehran, Iran (the "Denied Person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondent may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondent may oppose a request to renew this Order by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement,

[5] The third Boeing 747 appears to have undergone significant service maintenance and was not in flight operation during part of the renewal period.

[6] My findings are made pursuant to Section 766.24 and the Regulations, and are not based on the contempt finding against Mahan Airways in the U.K. litigation, which I understand is still ongoing. I note, however, that Mahan Airways' statements and actions in that litigation are consistent with my findings here.

which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondent and shall be published in the **Federal Register.**

This Order is effective immediately and shall remain in effect for 180 days.

Issued this March 7, 2010.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2010–5889 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV18

Endangered and Threatened Species; Notice of Intent to Prepare a Recovery Plan for Central California Coast Coho Salmon

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

ACTION: Notice of availability; request for comments and notice of public meetings.

SUMMARY: NMFS announces that the Draft Recovery Plan for Central California Coast coho salmon (Draft Plan) is available for public review and comment. The Draft Plan addresses the Central California Coast coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. In addition, public meetings will be announced as opportunities for providing comments on the Draft Plan (dates to be determined).

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific daylight time on May 17, 2010. Public meetings will also be held (see Public Meetings section below).

ADDRESSES: Comments may be submitted by any of the following methods:

- Via email: *CohoRecovery.swr@noaa.gov* (No files larger than 5MB can be accepted).
- Via U.S. mail: Charlotte A. Ambrose, National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95404 ATTN: Recovery Coordinator/CCC Coho Salmon Public Draft Recovery Plan Comments.
- Hand delivered: National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95404 ATTN: Recovery Coordinator/CCC Coho Salmon Comments. Business hours are 8 am to 5 pm Monday through Friday, except Federal holidays.
- Via fax: 707–578–3435. Please include the following on the cover page of the fax "ATTN: Recovery Coordinator/CCC Coho Salmon Public Draft Recovery Plan Comments".

FOR FURTHER INFORMATION CONTACT: Charlotte Ambrose, North Central California Coast Recovery Coordinator (707–575–6068).

SUPPLEMENTARY INFORMATION: NMFS is charged with the recovery of Pacific salmon and steelhead species listed under the ESA. Recovery means that listed species and their ecosystems are restored, and their future secured, so that the protections of the ESA are no longer necessary. The ESA specifies that recovery plans must include: (1) a description of management actions necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of time and costs required to achieve the plan's goal and the intermediate steps towards that goal. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. NMFS is hereby soliciting relevant information on CCC Coho Salmon ESU populations and their freshwater/marine habitats.

NMFS worked closely with the California Department of Fish and Game to integrate, where appropriate, recovery actions included in the previously approved February 2004 Recovery Strategy for California Coho Salmon. The document was used as a foundational tool to aid in the development of the Draft Plan. NMFS requests relevant information from the public that should be considered by NMFS during preparation of the final recovery plan.

Persons wishing to review the Draft Plan can obtain an electronic copy (i.e., CD ROM) from Ms. Andrea Berry by calling 1–866–300–2948 or by e-mailing a request to *andrea.berry@noaa.gov* with the subject line "CD ROM Request for CCC coho Salmon and Recovery Draft Plan." Electronic copies of the Draft Plan are also available on line on the following NMFS websites:

- *http://swr.nmfs.noaa.gov/recovery*
- *ftp://ftp.afsc.noaa.gov/SWR/Public/Public draft recovery plan CCC coho salmon/*

Public Meetings

Public meetings are planned for Ft. Bragg, Santa Cruz and Santa Rosa, CA. Information on exact locations, dates and times will be posted on the above website.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 15, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–5983 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XRO1

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program

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

ACTION: Notice of public workshop.

SUMMARY: NMFS announces a workshop to solicit feedback from owners and managers of shoreside processors that intend to take delivery of trawl-caught groundfish under the proposed Trawl Rationalization Program. We are interested in feedback concerning proposed regulations to improve catch monitoring and accounting in the trawl fisheries. Specifically, we seek feedback into proposed requirements for catch weighing, and the development of Catch Monitoring and Control Plans (CMCPs) that shoreside processors would be required to submit and conduct operations under. The workshop is open to the public, but NMFS is particularly seeking participation by people who are knowledgeable about the operations of shoreside processors that intend to participate in the rationalized trawl fishery.

DATES: The public workshops will be held on March 26, 2010, at 10 a.m. in Astoria Oregon; at 10 a.m. in Newport Oregon; and on April 1, 2010, at 10 a.m. in Eureka.

ADDRESSES: The Astoria Oregon workshop will be held at the Holiday Inn Express, 204 W Marine Drive. The Newport Oregon workshop will be held at the Guinn Library, Hartfield Marine

Science Center, 2020 Southeast Marine Science Drive. The Eureka California workshop will be held at the Humboldt Bay Aquatic Center, 921 Waterfront Drive.

FOR FURTHER INFORMATION CONTACT: Lori Jesse, 503–230–5429.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) has been developing a trawl rationalization program that would affect the limited entry trawl fishery of the Pacific Coast groundfish fishery. The Council has developed a trawl rationalization program through two amendments to the Pacific Coast Groundfish Management Plan (FMP). Amendment 20 which would create the structure and management details of the program; and Amendment 21 which would allocate the groundfish stocks between trawl and non-trawl fisheries.

As part of the rationalization process, NMFS is proposing new regulations concerning the monitoring of catch at shoreside processors taking deliveries of trawl groundfish. These proposed regulations are similar to regulations currently required for processors that take deliveries from rationalized fisheries off Alaska (Bering Sea and Alleutian Islands pollock, Gulf of Alaska rockfish). These regulations can be found at 50 CFR 679.28(g). Similar regulations also apply to processors taking deliveries under the crab rationalization program at 50 CFR 680.23(g).

In brief these regulations require shoreside processors to write and submit a CMCP that details how the processor will ensure that all catch is sorted and weighed to species; how that process can be monitored by NMFS-authorized personnel; and how the processor will test scales used to weigh catch. The CMCP also requires that processors give a list of the specific scales that will be used for weighing catch, their type, location and serial numbers. All scales used to weigh catch must be approved by the State and produce a printed record of the amount of catch weighed.

The CMCP regulations used in Alaska are based on a series of performance standards and they provide a great deal of flexibility for processors of a wide variety of sizes. However, these regulations will require some degree of modification for west coast processors. At this time, NMFS staff has not finalized draft regulations. However, draft proposed regulations will be made available at the time of each workshop.

NMFS seeks input into these proposed regulations from those with knowledge of trawl-groundfish processor operations, including plant owners, managers, and staff; and vendors or manufacturers of scales currently used in processing facilities. In order to better understand operations and issues associated with individual processors, NMFS staff will be available to tour individual processors following each workshop.

Special Accommodations

The workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Murray Bauer, 541–867–0580, at least 5 working days prior to the meeting date.

Dated: March 15, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5922 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU09

Listing Endangered and Threatened Species; Initiation of 5-Year Reviews for 27 Evolutionarily Significant Units and Distinct Population Segments of Pacific Salmon and Steelhead

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

ACTION: Notice of initiation of 5-year reviews; request for information.

SUMMARY: We, NMFS, announce 5-year reviews of 16 evolutionarily significant units (ESUs) of Pacific salmon (*Oncorhynchus sp.*) and 11 distinct population segments (DPSs) of steelhead (*Oncorhynchus mykiss*) under the Endangered Species Act of 1973, as amended (ESA). The purpose of the review is to ensure the accuracy of the listing classifications of these salmonids. On June 28, 2005, NMFS issued final listing determinations for 16 ESUs of Pacific salmon and on January 5, 2006 for ten DPSs of steelhead. We will also complete a 5-year review of Puget Sound steelhead listed on May 11, 2007. The 5-year reviews will be based on the best scientific and commercial data available at the time of the reviews; therefore, we request submission of any such information on these ESUs and DPSs that has become available since the listing determinations in 2005, 2006, and 2007. Based on the results of these 5-year reviews, we will make the requisite determinations under the ESA.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than May 17, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Please submit information on salmonids in Oregon, Idaho, and Washington to Eric Murray, NMFS Northwest Region, 1201 Lloyd Blvd, Suite 1100, Portland, OR 97232 and information on salmonids in California to Craig Wingert, NMFS Southwest Region, 501, West Ocean Blvd., Long Beach, CA, 90802–4213. Information received in response to this notice will be available for public inspection by appointment, during normal business hours, at the above addresses. Information may also be submitted via facsimile (fax) to (503) 230–5441 (Northwest Region) or (562) 980–4027 (Southwest Region).

FOR FURTHER INFORMATION CONTACT: Eric Murray at the above address or at (503) 231–2378 or Craig Wingert at the above address or at (562) 980–4021.

SUPPLEMENTARY INFORMATION: Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews, we determine under section 4(c)(2)(B) whether a species should be delisted, or reclassified from endangered to threatened or from threatened to endangered.

We will undertake reviews for the following salmon ESUs: (1) Sacramento River winter-run Chinook salmon, (2) Upper Columbia River spring-run Chinook salmon, (3) Snake River spring/summer-run Chinook salmon; (4) Central Valley spring-run Chinook salmon: (5) California Coastal Chinook salmon; (6) Puget Sound Chinook salmon; (7) Lower Columbia River Chinook salmon; (8) Upper Willamette River Chinook salmon; (9) Snake River fall-run Chinook salmon; (10) Hood Canal summer-run chum salmon; (11) Columbia River chum salmon; (12) Central California Coast coho salmon; (13) Southern Oregon/Northern California Coast coho salmon; (14) Lower Columbia River coho salmon; (15) Snake River sockeye salmon; and (16) Ozette Lake sockeye salmon.

We will undertake reviews for the following steelhead DPSs: (1) Southern California; (2) Upper Columbia River; (3) Middle Columbia River; (4) Snake River Basin; (5) Lower Columbia River; (6) Upper Willamette; (7) South-Central California Coast; (8) Central California Coast; (9) Northern California; (10) California Central Valley; and (11) Puget

Sound. Information about these ESUs and DPSs can be found at our regional websites: *http://www.nwr.noaa.gov/* (Northwest Region) or *http://swr.nmfs.noaa.gov/* (Southwest Region). The Oregon Coast coho salmon ESU is currently undergoing review and therefore is not included in these 5-year reviews.

Our regulations for periodic reviews at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active reviews of the ESUs and DPSs of salmon and steelhead listed above. Any change in listing classification would require a separate rulemaking process.

Determining if a Species is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Application of the ESU and DPS Policies

NMFS is responsible for determining whether species, subspecies, or DPSs of Pacific salmon and steelhead are threatened or endangered under the ESA. To identify the proper taxonomic unit for consideration in a listing determination, we use our Policy on Applying the Definition of Species under the ESA to Pacific Salmon (ESU Policy) (56 FR 58612). Under this policy, populations of salmon substantially reproductively isolated from other conspecific populations and representing an important component in the evolutionary legacy of the biological species are considered to be an ESU. In our listing determinations for Pacific salmon under the ESA, we have treated an ESU as constituting a DPS, and hence a "species," under the ESA.

On January 5, 2006, we announced that we would apply the joint US Fish and Wildlife Service-NMFS DPS policy (61 FR 4722) rather than our ESU Policy to populations of steelhead. Under this policy, a DPS of steelhead must be discrete from other conspecific populations, and it must be significant to its taxon. A group of organisms is discrete if it is "markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, and behavioral factors." Under the DPS Policy, if a population group is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species.

On June 28, 2005, we announced a final policy addressing the role of artificially propagated (hatchery produced) Pacific salmon and steelhead in listing determinations under the ESA (70 FR 37204). Specifically, this policy (1) establishes criteria for including hatchery stocks in ESUs and DPSs, (2) provides direction for considering hatchery fish in extinction risk assessments of ESUs and DPSs, (3) requires that hatchery fish determined to be part of an ESU will be included in any listing of the ESU; (4) affirms NMFS' commitment to conserving natural salmon and steelhead populations and the ecosystems upon which they depend, and (5) affirms NMFS' commitment to fulfilling trust and treaty obligations with regard to the harvest of some Pacific salmon and steelhead populations, consistent with the conservation and recovery of listed salmon and steelhead ESUs.

Public Solicitation of New Information

The 5-year reviews will consider the best scientific and commercial data available and new information that has become available since the last listing determinations. Our Northwest and Southwest Fisheries Science Centers will assist the Regions in gathering and analyzing this information. To ensure that the 5-year reviews are complete and based on the best available information, we are soliciting new information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the salmon and steelhead ESUs and DPSs listed above.

Specifically, we request new information since our listing determinations in 2005, 2006, and 2007 on (1) Population abundance; (2) population productivity; (3) changes in species distribution or population spatial structure; (4) genetics or other diversity measures; (5) changes in habitat conditions; (6) conservation measures that have been implemented that benefit the species; (7) status and trends of threats; (8) changes to salmon and steelhead hatchery programs that may affect ESU or DPS membership, and (9) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information in the previous listing determination, and improved analytical methods.

If you wish to provide information for this 5-year review, you may submit your information and materials to Eric Murray or Craig Wingert (see **ADDRESSES**). Our practice is to make submissions of information, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. We will not, however, consider anonymous submissions. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Information and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 12, 2010

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–5994 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV26

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage, AK.

DATES: The North Pacific Fishery Management Council and its advisory committees will hold public meetings April 6–14, 2010. The Council will begin its plenary session at 8 a.m. on Thursday April 8 continuing through Wednesday April 14. The Council's Advisory Panel (AP) will begin at 8 a.m., Tuesday April 6 and continue through Saturday April 10. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Tuesday April 6 and continue through Thursday April 8, 2010. The Enforcement Committee will meet Wednesday April 7 from 9 a.m. to 12 p.m. The Ecosystem Committee will meet Wednesday April 7 from 1 p.m. to 5 p.m. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports:

1. Executive Director's Report
NMFS Management Report
ADF&G Report
U.S. Coast Guard Report
U.S. Fish & Wildlife Service Report
Protected Species Report

2. Steller Sea Lion Biological Opinion (BiOP) (T): Review BiOp/schedule/process, and take action as necessary.

3. Halibut Charter Permit Endorsements: Review analysis and take final action to clarify permit endorsements.

4. Groundfish Annual Catch Limits (ACL): Receive report from Non-Target Species Committee; Final action on Groundfish ACL requirements.

5. Gulf of Alaska (GOA) Rockfish Program: Initial review of analysis for Central GOA limited access rockfish program.

6. Bering Sea Crab Rationalization Program Issues: Emergency Exemptions from Regionalization - Stakeholder proposals; Final action on Western Aleutian Golden King Crab regional delivery.

7. Crab Management: Preliminary review of BSAI Snow/Tanner crab rebuilding plans; Preliminary review of Pribilof Blue King crab rebuilding plan.

8. Scallop Management: Review Stock Assessment Fishery Evaluation report; preliminary review of scallop ACL analysis.

9. Miscellaneous Groundfish Issues: Initial review of analysis for controlling Gulf of Alaska (GOA) Tanner crab bycatch; review discussion paper on GOA Chinook Salmon Bycatch; review progress on Northern Bering Sea Research Plan; receive Amendment 80 Cooperative report; action as necessary.

10. Miscellaneous Issues: Essential Fish Habitat (EFH) 5 year review, action as necessary; review and adopt Habitats Areas of Particular Concern (HAPC) criteria and priorities; report and action as necessary on Aleutian Island Team terms of reference; rural Community Outreach Report; action as necessary.

11. Staff Tasking: Review Committees and tasking; review process and timing for King crab Electronic Data reporting.

12. Other Business

The SSC agenda will include the following issues:

Steller Sea Lion BiOP
GOA Rockfish
Scallop Management
Miscellaneous Groundfish Issues
Miscellaneous Issues

The Advisory Panel will address most of the same agenda issues as the Council, except for #1 reports, and #3 halibut charter permit endorsements. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 12, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5840 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV27

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on April 7–8, 2010. The Council will convene on Wednesday, April 7, 2010, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m. They will reconvene on Thursday, April 8, 2010, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Marriott Frenchman's Reef Hotel, 5 Estate Bakkeroe, St. Thomas, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 134th regular Council Meeting to discuss the items contained in the following agenda:

April 7, 2010 - 9 a.m. to 5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of the 133rd Council Meeting Verbatim Transcription
- Executive Director's Report
- Office of Protected Resources Report

• Scientific and Statistical Committee Meeting Report
• Advisory Panel Meeting
• ACLs/AMs Report/Discussion
• PUBLIC COMMENT PERIOD - (5) Five-minute Presentations

5:15 p.m. to 6 p.m.

• Administrative Committee Meeting
- AP/SSC/HAP Membership
- Budget
- FY 2009
- Other Business

April 8, 2010, 9 a.m. to 5 p.m.

• Continuation of ACLs/AMs Report/ Discussion (if needed)
• Catch Share Project - Walter Keithly
• Trap Reduction Program Update
• Enforcement Reports
- Puerto Rico - DNER
- U.S. Virgin Islands - DPNR
- NOAA/NMFS
- U.S. Coast Guard
• Administrative Committee Recommendations
• Meetings Attended by Council Members and Staff
• PUBLIC COMMENT PERIOD (5-minute Presentations)
• Other Business
• Next Council Meeting

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: March 15, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5905 Filed 3–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 100305127–0127–01]

Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT): Closing Date

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

ACTION: Notice of Availability of Funds.

SUMMARY: Pursuant to the Consolidated Appropriations Act, 2010, Public Law No. 111–117, the U.S. Department of Commerce announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account.

DATES: Applications must be received on or before 5:00 p.m. Eastern Daylight Time, May 3, 2010. Applications submitted by facsimile are not acceptable. NTIA will not accept applications received after the deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Time, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4812, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230. Application materials may be obtained electronically via the Internet at www.grants.gov.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

Electronic Access

The full federal funding opportunity announcement for the PEACESAT Fiscal Year (FY) 2010 grant cycle is available through www.grants.gov or by contacting NTIA at the address noted above. Application materials may be obtained electronically via the Internet at www.grants.gov.

Program Description

Pursuant to the Consolidated Appropriations Act, 2010, Public Law No. 111–117, the U.S. Department of Commerce announces the solicitation of applications for a grant for the PEACESAT Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account.

Funding Availability

Funding for the PEACESAT Program is provided pursuant to the Consolidated Appropriations Act, 2010, Public Law No. 111–117 and Public Law No. 106–113, "The Consolidated Appropriations Act, Fiscal Year 2000." Public Law No. 106–113 provides "That, hereafter, notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds."

The Congress has appropriated $18 million for FY 2010 Public Telecommunications Facilities Program (PTFP) and PEACESAT awards. Of this amount, NTIA anticipates making a single award for approximately $500,000 for the PEACESAT Program in FY 2010. For FY 2009, NTIA issued one award for the PEACESAT project in the amount of $499,641.

Statutory and Regulatory Authority

The PEACESAT Program was authorized under Public Law No. 100–584 (102 Stat. 2970) and also Public Law

No. 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Applications submitted in response to this solicitation for PEACESAT applications are exempt from the PTFP regulations at 15 CFR Part 2301.

Catalog of Federal Domestic Assistance

Not Applicable.

Eligibility

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal Government. Individuals are not eligible to apply for the PEACESAT Program funds.

Evaluation and Selection Process

The Public Broadcasting Division (PBD) administers the PEACESAT Program and places a summary of applications received on the Internet at http://www.ntia.doc.gov/otiahome/peacesat/peacesat.html. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. Listing does not preclude subsequent return of the application for failure to meet application requirements and does not assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

Each eligible application is evaluated by three independent reviewers who have demonstrated expertise in the programmatic and technological aspects of the application. The reviewers will evaluate applications according to the evaluation criteria in the following section and provide individual written ratings of each application. No consensus advice will be provided by the reviewers. State Single Point of Contact (SPOC) offices, per Executive Order 12372, may provide recommendations on applications under consideration.

The PBD program staff prepares a rank order of all applications according to the scores submitted by the independent reviewers. The PBD program staff then prepares written summary recommendations for the Director of the Public Broadcasting Division (PBD Director). These recommendations incorporate the independent reviewers' ratings and analysis of the degree to which a proposed project meets the PEACESAT Program purposes, as described above in the Program Description, and applicable cost principles. Staff recommendations also consider (1) project impact, (2) the cost/benefit of a project, and (3) whether the reviewers consistently applied the evaluation criteria.

The PBD Director considers the program staff's summary recommendations in accordance with the funding priorities and selection factors referenced in the next section and recommends the funding order of the applications for the PEACESAT Programs in three categories: "Recommended for Funding," "Recommended for Funding If Funds Are Available," and "Not Recommended for Funding." The PBD Director presents recommendations to the Associate Administrator, Office of Telecommunications and Information Applications (OTIA Associate Administrator), for review and approval.

Upon review and approval based on the funding priorities and selection factors referenced in the next section by the OTIA Associate Administrator, the OTIA Associate Administrator's and the PBD Director's recommendations are presented to the Selecting Official, the Assistant Secretary for Communications and Information, who is the NTIA Administrator. The Selecting Official then makes the final award selections taking into consideration these recommendations and the degree to which the slate of applications, taken as a whole, satisfies the stated purposes for the PEACESAT Program.

Prior to award, applications may be negotiated between NTIA and the applicant to resolve any differences between the original request and what NTIA is willing to consider funding. Some applications may be dropped from the slate due to lack of Federal Communications Commission (FCC) authorization, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made.

The Program will not award a grant until it has received confirmation that the FCC will issue any necessary authorization.

After final award selections have been made, the Agency will notify the applicant of one of the following actions:

(1) Selection of the application for funding, in whole or in part;

(2) Deferral of the application for subsequent consideration; or

(3) Rejection of the application with an explanation and the reason, e.g., if an applicant is not eligible or if the proposed project does not fall within the purposes of the PEACESAT program.

Funding Priorities and Selection Factors

The PBD Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the OTIA Associate Administrator for review and approval. The PBD Director's recommendations and the OTIA Associate Administrator's review and approval will take into account the following selection factors:

(1) The program staff evaluations, including the outside reviewers;

(2) Whether the applicant has any current NTIA grants;

(3) The geographic distribution of the proposed grant awards; and

(4) The availability of funds.

The Selection Official considers these recommendations and whether the proposed awards satisfy the PEACESAT program purposes.

Evaluation Criteria

Each eligible application that is timely received, is materially complete, and proposes an eligible project will be considered under the evaluation criteria described here. The first three criteria — 1. Meeting the Purposes of the PEACESAT Program, 2. Extent of Need for the Project, and 3. Plan of Operation for the Project — are each worth 25 points. Criterion 4, Budget and Cost Effectiveness, is worth 20 points. Criterion 5, Quality of Key Personnel, is worth 5 points.

Criterion 1. Meeting the Purposes of the PEACESAT Program.

The extent to which the project meets the purposes of the PEACESAT Program including consideration of: (i) how well the proposal meets the objectives of the PEACESAT Program; and (ii) how the objectives of the proposal further the purposes of the PEACESAT Program.

Criterion 2. Extent of Need for the Project.

The extent to which the project meets the needs of the PEACESAT Program, including consideration of: (i) the needs addressed by the project; (ii) how the applicant identifies those needs; (iii) how those needs will be met by the project; and (iv) the benefits to be gained by meeting those needs.

Criterion 3. Plan of Operation for the Project.

The extent to which the project meets the plan of operation for the project, including consideration of: (i) the quality of the design of the project; (ii)

the extent to which the plan of management is effective and ensures proper and efficient administration of the project; (iii) how well the objectives of the project relate to the purposes of the PEACESAT Program; (iv) the quality of the applicant's plan to use its resources and personnel to achieve each objective; and (v) how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

Criterion 4. Budget and Cost Effectiveness.

The extent to which: (i) the budget is adequate to support the project; and (ii) costs are reasonable in relation to the objectives of the project.

Criterion 5. Quality of Key Personnel.

The extent to which the applicant plans to use on the project, including: (i) the qualifications of the project director if one is to be used; (ii) the qualifications of each of the other key personnel to be used in the project; (iii) the time that each person will commit to the project; and (iv) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability. As used in this section, "qualifications" refers to experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

Cost Sharing Requirements

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the December 2, 2009, Notice regarding the PTFP Program, see 74 FR 163120 (2009).

Intergovernmental Review

PEACESAT applications are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," if the state in which the applicant organization is located participates in the process. Usually, the submission to the SPOC needs to be only the first two pages of the Application Form, but applicants should contact their own SPOC offices to ensure compliance with its requirements. The names and addresses of the SPOC offices are listed on the PTFP website and at the Office of Management and Budget's (OMB) home page at http://www.whitehouse.gov/omb/grants__spoc.

Universal Identifier

All applicants (nonprofits, state and local governments, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1–866–705–5711 or via the Internet at www.fedgov.dnb.com/webform.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) is applicable to this solicitation.

Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number. The PEACESAT application package requires the use of the following forms: SF–424, SF–424A, SF–424B, SF–LLL. These forms have been approved under the respective OMB Control Nos. 4040–0004, 4040–0006, and 4040–0007.

Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. § 553(a)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. § 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 12, 2010.

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 2010–5890 Filed 3–18–10; 8:45 am]

BILLING CODE 3510–60–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 24, 2010; 3–5 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Closed to the Public.

Matter To Be Considered

Compliance Weekly Report—Commission Briefing

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 16, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–6132 Filed 3–16–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 24, 2010, 9 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: 1. Pending Decisional Matter: Bassinets—Notice of Proposed Rulemaking (NPR)

2. Definition of Children's Product—Notice of Proposed Rulemaking (NPR)

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: March 16, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–6133 Filed 3–16–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0028]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on April 19, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 4, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS D02

SYSTEM NAME:

PEGASYS CARDKEY.

SYSTEM LOCATION:

Washington Headquarters Services, Defense Facilities Directorate, Federal Facilities Division, Pentagon Building Management Office, Building Operations Command Center, 1155 Defense Pentagon 1B349, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD military, civilian employees, and contractors who require room access to Pentagon space under the control of Pentagon Building Management Office and Building Operations Command Center for Wedge 1 Corridors 3 and 4.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN) and sponsoring DoD office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; DoD Directive 5110.4, Washington Headquarters Services (WHS); and E.O. 9397, (SSN) as amended.

PURPOSE(S):

This system maintains a listing of individuals who have been granted room entry access to areas of the Pentagon under the control of Washington Headquarters Services/Defense Facilities Directorate/Federal Facilities Division.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in a secure and limited access area. Access is password protected and is limited to those individuals who require access to the records to perform their official assigned duties. Physical entry by unauthorized persons is restricted through the use of locks and Pentagon Force Protection Agency (PFPA) card swipe system.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration approve the retention and disposal of these records, treat them as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Facility Manager, Washington Headquarters Service, Defense Facilities Directorate, Federal Facilities Division, Pentagon Building Management Office, Building Operations Command Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Facility Manager, Washington Headquarters Service, Defense Facilities Directorate, Federal Facilities Division, Pentagon Building Management Office, Building Operations Command Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name and Social Security Number (SSN) of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

Written requests should contain the full name and Social Security Number (SSN) of the individual and be signed as well as the name and number of this system of records notice so that your request can be tasked to the appropriate office.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–5955 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0025]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency, (DoD).

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Intelligence Agency proposes to amend a system of records notice of its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on April 19, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Ms. Theresa S. Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0435

SYSTEM NAME:

DIA Military Awards Files (July 19, 2006; 71 FR 41001).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Full name, current address, telephone number and Social Security Number (SSN) of individual and supporting documents for the awards nomination and the results of actions or recommendations of endorsing and approving officials for joint and service awards."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Department of Defense Manual 1348.33M, Manual of Military Decorations; Defense Intelligence Agency Instruction 1348.001, Military Personnel Awards; Army Regulation 600–8–22, Military Awards; SECNAV Inst 1650.1H, Navy and Military Awards Instruction; Air Force Instruction 36–2803, Air Force Awards and Decorations Program; and E.O. 9397 (SSN), as amended."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "By last name of individual and Social Security Number (SSN)."

SAFEGUARDS:

Delete entry and replace with "Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and user IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system."

RETENTION AND DISPOSAL:

Delete entry and replace with "Temporary Records—Records are maintained for 3 years within DIA, then retired to the Washington National Records Center where they are destroyed when 15 years old. The records are destroyed by shedding/erasure."

* * * * *

LDIA 0435

SYSTEM NAME:

DIA Military Awards Files.

SYSTEM LOCATION:

Defense Intelligence Agency, 200 McDill Boulevard, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, active duty and reserve, and Coast Guard personnel during time of war, recommended for an award while assigned or attached to DIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, current address, telephone number and Social Security Number (SSN) of individual and supporting documents for the awards nomination and the results of actions or recommendations of endorsing and approving officials for joint and service awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Department of Defense Manual 1348.33M, Manual of Military Decorations; Defense Intelligence Agency Instruction 1348.001, Military Personnel Awards; Army Regulation 600–8–22, Military Awards; SECNAV Inst 1650.1H, Navy and Military Awards Instruction; Air Force Instruction 36–2803, Air Force Awards and Decorations Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information is collected and submitted to determine eligibility for awards and decorations to individuals and units while assigned or attached to the DIA. Information is required for preparation of orders for award citation and inclusion in individual's Service record. Records are used to obtain the approval for the awarding of the decoration, for the compilation of required statistical data and provided to the Military departments when appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and stored electronically in a database.

RETRIEVABILITY:

By last name of individual and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Temporary Records—Records are maintained for 3 years within DIA, then retired to the Washington National Records Center where they are destroyed when 15 years old. The records are destroyed by shedding/erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Human Capital, ATTN: HCH, Defense Intelligence Agency, Washington DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd. Washington DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 "Defense Intelligence Agency Privacy Program"; 32 CFR part 319 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency officials, parent Service and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–5959 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0026]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Information Systems Agency is proposing to add a system of records to its inventory of records system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 19, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2409.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from: Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

The proposed system report, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, was submitted on March 5, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.12

SYSTEM NAME:

Identity Management (IDM)

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), 401 East Moore Drive, Montgomery, AL 36114–1300.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DISA civilian employees, military personnel assigned or detailed to DISA, and contractors assigned to all DISA elements, including DISA field activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, duty title, grade, Social Security Number (SSN), address and phone number and Common Access Card identification number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. Chp. 8, Defense Agencies and Department of Defense Field Activities; DoD Directive 5105.19, Defense Information Systems Agency (DISA); E.O. 9397 (SSN), as amended.

PURPOSE(S):

Provide a standardized web based work flow for the current Identity Management (IDM) process and provides approval for new users to gain access to additional systems within DISA. Also used as a management tracking tool.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By name, last 8 digits of the Common Access Card identification number, and/or Social Security Number (SSN).

SAFEGUARDS:

Buildings are secured by guards during duty and non-duty hours. Access to records is controlled by management personnel, who are responsible for maintaining the confidentiality of the records and using the information contained therein only for official purposes. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of Common Access Card (CAC) certification.

RETENTION AND DISPOSAL:

Records are continuously updated. Obsolete computer records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

GS4M2, Defense Information Systems Agency, 401 East Moore Drive, Montgomery, AL 36114–1300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to GS4M2, Defense Information Systems Agency, 401 East Moore Drive, Montgomery, AL 36114–1300.

The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number (SSN) should be included in the inquiry for positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to GS4M2, Defense Information Systems Agency, 401 East Moore Drive, Montgomery, AL 36114–1300.

The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number (SSN) should be included in the inquiry for positive identification.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2 at 32 CFR part 316 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information gathered from information stored on CAC and the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–5962 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0027]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on April 19, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the

Privacy Act of 1974, as amended, was submitted on March 4, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPR 30

SYSTEM NAME:

Department of Defense Readiness Reporting System (DRRS) (December 10, 2004; 69 FR 71803).

CHANGES:

Delete system ID number entry and replace with "DPR 30 DoD."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Office of the Secretary of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, Director of Readiness, Programming and Assessment, 4000 Defense Pentagon, Washington, DC 20301–4000.

Military Major Commands of the U.S. Air Force, U.S. Army, U.S. Navy and U.S. Marine Corps, Coast Guard, Combatant Commanders and Reserve Affairs. For a complete list of mailing addresses, contact the system manager."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, date of birth, gender, Social Security Number (SSN), rank/grade, duty status, skill specialty, and deployability and related reason codes for readiness posture which are used in determining the readiness status of individuals and units."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Individual's name and unit."

SAFEGUARDS:

Delete entry and replace with "Access is limited to authorized and appropriately cleared personnel as determined by the system manager. Electronic records are maintained in a controlled facility. Physical entry is restricted by use of locks, guards, and is accessible only to authorized or cleared personnel. Access is limited to person(s) responsible for servicing the record in performance of their official duties, which are properly screened and cleared for need-to-know. System users can view only truncated Social Security Number (SSN). Access to computerized data requires Common Access Card (CAC) and password, which are changed periodically."

RETENTION AND DISPOSAL:

Delete entry and replace with "Permanent. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives and Records Administration (NARA)."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Defense Readiness Reporting System Implementation Office, Office of the Secretary of Defense, Office of the Under Secretary Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commander. For a complete list of mailing addresses, contact the system manager.

Individual should provide their full name and unit and sign the request."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the local commander. For a complete list of mailing addresses, contact the system manager.

Individual should provide their full name and unit and sign the request."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is obtained from DoD Staff, field installations and several DoD information systems to include the Enlisted Personnel Management Information System (EPMIS), Officer Personnel Management Information System (OPMIS), Marine Corps Total Force System (MCTFS), Medical Readiness Reporting System (MRRS), and the Military Personnel Records System."

* * * * *

DPR 30 DoD

SYSTEM NAME:

Department of Defense Readiness Reporting System (DRRS) Records.

SYSTEM LOCATION:

Office of the Secretary of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, Director of Readiness, Programming and Assessment, 4000 Defense Pentagon, Washington, DC 20301–4000.

Military Major Commands of the U.S. Air Force, U.S. Army, U.S. Navy and U.S. Marine Corps, Coast Guard, Combatant Commanders and Reserve Affairs. For a complete list of mailing addresses, contact the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty, National Guard, and Reserve military service members of the Air Force, Navy, Army, Marine Corps, and approved foreign military personnel assigned/attached to a readiness reporting unit under the auspices of Department of Defense Readiness Reporting guidelines and procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, gender, Social Security Number (SSN), rank/grade, duty status, skill specialty, deployability and related reason codes for readiness posture.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 117, Readiness Reporting System: establishment; Reporting to Congressional Committees; 10 U.S.C. 113, Secretary of Defense; DoD Directive 5149.2, Senior Readiness Oversight Council; DoD Directive 7730.65, Department of Defense Readiness

Reporting System; E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Defense Readiness Reporting System (DRRS) provides the means to manage and report the readiness of the Department of Defense and its subordinate Components to execute the National Military Strategy as assigned by the Secretary of Defense in the Defense Planning Guidance, Contingency Planning Guidance, Theater Security Cooperation Guidance, and the Unified Command Plan. DRRS builds upon the processes and readiness assessment tools used in the Department of Defense to establish a capabilities-based, adaptive, near real-time readiness reporting system.

All DoD Components will use the DRRS information to identify critical readiness deficiencies, develop strategies for rectifying these deficiencies, and ensure they are addressed in appropriate program/budget planning or other DoD management systems. DDRS will permit commanders to obtain pertinent readiness data on personnel assigned/attached to their units.

The major subsystems of the Defense Readiness Reporting System include:

(a) The Enhanced Status of Resources and Training System (ESORTS), an automated, near real-time readiness reporting system that provides resource standards and current readiness status for operational forces and defense support organizations in terms of their ability to perform their mission essential tasks.

(b) The Planning and Assessment Tools Suite (PATS) provides the capability to assess plans using real unit data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name and unit.

SAFEGUARDS:

Access is limited to authorized and appropriately cleared personnel as determined by the system manager. Electronic records are maintained in a controlled facility. Physical entry is restricted by use of locks, guards, and is accessible only to authorized or cleared personnel. Access is limited to person(s) responsible for servicing the record in performance of their official duties, which are properly screened and cleared for need-to-know. System users can view only truncated Social Security Number (SSN). Access to computerized data requires Common Access Card (CAC) and password, which are changed periodically.

RETENTION AND DISPOSAL:

Permanent. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Readiness Reporting System Implementation Office, Office of the Secretary of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commander. For a complete list of mailing addresses, contact the system manager.

Individual should provide their full name and unit and sign the request.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local commander. For a complete list of mailing addresses, contact the system manager.

Individual should provide their full name and unit and sign the request.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from DoD Staff, field installations and several DoD information systems to include the Enlisted Personnel Management Information System (EPMIS), Officer Personnel Management Information System (OPMIS), Marine Corps Total Force System (MCTFS), Medical Readiness Reporting System (MRRS), and the Military Personnel Records System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–5963 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committee; Defense Acquisition University Board of Visitors

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of Public Law 101–510, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50(c), the Department of Defense gives notice that it is renewing the charter for the Defense Acquisition University Board of Visitors (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board is a non-discretionary federal advisory committee that provides advice and recommendations on the overall management and governance of the Defense Acquisition University.

The Board shall provide the Secretary of Defense, through the Secretary of the Under Secretary of Defense (Acquisition, Technology and Logistics) and the President of the Defense Acquisition University independent advice and recommendations on organization management, curricula, methods of instruction, facilities and other matters of interest to the Defense Acquisition University.

The Under Secretary of Defense (Acquisition, Technology and Logistics) or a designated representative may act upon the Board's advice and recommendations.

The Board shall be composed of not more than 16 members, who are eminent authorities in academia, business, and the defense industry. Board members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Board members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees. With the exception of travel and per diem for official travel, Board members shall serve without compensation.

The Under Secretary of Defense (Acquisition, Technology and Logistics) or a designated representative shall select the Board's Chairperson from the total Board membership, and this individual shall serve at the discretion of the Secretary of Defense, through the Under Secretary of Defense (Acquisition, Technology and Logistics).

In addition, the Under Secretary of Defense (Acquisition, Technology and Logistics) or a designated representative may invite other distinguished Government officers to serve as non-voting observers of the Board, and appoint, pursuant to 5 U.S.C. 3109, non-voting consultants, with special expertise, to assist the Board on an ad hoc basis.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C 552b, as amended), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the President of the Defense Acquisition University and the Board's Chairperson. The estimated number of Board meetings is three per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors' mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Acquisition University Board of Visitors Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Acquisition University Board of Visitors. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–5960 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2010–0006]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on April 19, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPF, 1800 Air Force Pentagon, Washington, DC 20330–1800.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on March 4, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996; 61 FR 6427).

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F011 AF AFMC B

SYSTEM NAME:

Patriot Excalibur (PEX) System Records.

SYSTEM LOCATION:

Patriot Excalibur, 46 TW/XPI, 410I Government Ave., Valparaiso, FL 32579–1601. Segments are also maintained at commands, bases and agencies. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel and civilian employees assigned or attached to HQ Air Force Major Commands, Air National Guard and Air Force Reserve Component personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), passport number, home and cell telephone number, home and e-mail address, Major command of assignment, Air Force Specialty Code indicating professional duties, unit, base of assignment, flight and ground professional flying training accomplishments, aircrew qualification status, physical status for flight duties, types of aircraft assigned, and flying incentive pay information needed to administer the payment for each individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2608, Military Personnel Records System and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This system will coordinate the activities of military flying squadrons for flight scheduling, aircraft maintenance, Qualification/Continuation training and management of Aircrew Standardization and Evaluation Program. PEX provides information and automated data processing capabilities used to manage and administer Air Force aviation and parachutist management operations such as aircrew and parachutist training and evaluation, flight and jump scheduling functions, flying and parachutist safety and related functions needed to attain and maintain combat or mission readiness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number (SSN).

SAFEGUARDS:

Electronic records are maintained within secured buildings in areas accessible only to persons having official need-to-know, and who are properly trained and screened. In addition, the system is a controlled system with passwords, and Common Access Card (CAC) governing access to data. Computer terminals are locked when not in use or kept under surveillance.

RETENTION AND DISPOSAL:

Records are deleted from the database when no longer needed for the mission.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Patriot Excalibur, 46 TW/XPI, 410I Government Ave., Valparaiso, FL 32579–1601.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local custodians of the record system at the host base. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. Individuals can also contact Program Manager, Patriot Excalibur, 46 TW/XPI, 410I Government Ave., Valparaiso, FL 32579–1601.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the local custodians of the record system at the host base. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. Individuals can also contact Program Manager, Patriot Excalibur, 46 TW/XPI, 410I Government Ave., Valparaiso, FL 32579–1601.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, contesting contents, and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program; 32 Code of Federal Regulations (CFR) part 806b, Air Force Privacy Act Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, the Aviation Resource Management System (ARMS) and other automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–5952 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2010–0007]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on April 19, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and

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

FOR FURTHER INFORMATION CONTACT: Ben Swilley, (703) 696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPF, 1800 Air Force Pentagon, Washington, DC 20330–1800.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on March 4, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996; 61 FR 6427).

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F031 AF SF B

SYSTEM NAME:

Security Forces Management Information System (SFMIS) (October 14, 2003; 68 FR 59168).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals involved in incidents and accidents occurring on Air Force (AF) installations, or reportable incidents occurring off base. Including all Active Duty Military personnel, Reserve and Guard; Department of Defense (DoD) civilians and contractors. Retirees, who may be victims, witnesses, complainants, offenders, suspects, drivers; individuals who have had tickets issued on base, or had their license suspended or revoked; individuals barred from the installation; and persons possessing a licensed firearm are part of the system.

Additionally, the system includes visitors to the installation, individuals requiring access to controlled and/or restricted areas, civilians applying for Federal employment, and individuals who have weapons training and qualifications, or store firearms in an approved government facility."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name; Social Security Number (SSN); date of birth; place of birth; home address and phone number; alias; race; ethnicity; sex; marital status; identifying marks, such as tattoos and scars; height, weight, eye, and hair color.

The date, location, nature and details of the incident or offense that include if alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; suspension, revocation or debarment records. Information in the system includes if there is a bias against any particular group involved; if offense involved sexual harassment; actions taken by military commanders that include administrative and/or non-judicial measures, including sanctions imposed. Referral actions, court-martial results and punishments imposed. Confinement information, that consists of location of correctional facility, gang/cult affiliation if applicable; and release, parole, clemency eligibility dates.

Additionally, this system includes information on individuals Permanent Change of Station (PCS), rank, duty status and date, assignment state and country, base, current unit of assignment, office symbol and duty phone. Information is also collected on the Primary Air Force Specialty Code (PAFSC), Duty Air Force Specialty Code (DAFSC), Control Air Force Specialty Code (CAFSC), Army Post Office (APO) Address, date eligible to return from overseas (DEROS) data, gaining base and organization, date entered country, history, personally owned weapons, the individual's weapons training status and information, fingerprint images and demographic data, and accident reporting."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; 18 U.S.C. 922 note, Unlawful Acts note referring to the Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Judiciary and Judicial Procedures, note referring to the Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 *et seq.,* Crime Victims Fund; and Amendment to Lautenberg, 18 U.S.C. 922(d)(9) Unlawful Acts; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); Air Force Instruction 31–203, Security Forces Management Information System; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "Serves as a repository of criminal and specified other non-criminal incidents used to satisfy statutory and regulatory reporting requirements, specifically crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; provides personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act.

The system is the primary host of all United States Air Force (USAF) vehicle and private weapon registration, visitor pass and restricted area authorization tracking. Other operations include capabilities to track combat arms training and qualifications, that include the last qualified date, score, and next due date by individual weapon and course of fire. Weapon maintenance, inventory control and tracking, modification, inspection, and weapon firing are recorded in the combat arms function, and munitions expenditure.

Tracks the scheduling of range and equipment usage, inspection and maintenance. Certification records for other agencies that utilize the range are maintained in this system. Most recently, it provides a direct interface with the National Crime Information Center (NCIC) and Integrated Automated Fingerprint Identification System (IAFIS) as hosted by the Federal Bureau of Investigations (FBI) via the Criminal Justice Information System (CJIS).

The system hosts Federal Application User Fee (FAUF) transactions for civilians applying for federal employment. FAUF is a format required for any branches of the U.S. military in connection with individual's enlisting, Officer Candidate School, federal agencies in connection with employment, security updates, or contract personnel. This module includes an Office of Personnel Management (OPM) FAUF transaction used to transmit FAUF transactions to the Air Force Office of Personnel & Management. Additionally, the system tracks accident reporting, providing user input and tracking for traffic accidents."

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SAFEGUARDS:

Delete entry and replace with "Records are accessed by individuals

responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Administrators ensure members requiring access sign and acknowledge systems rules of behavior document that outlines security responsibilities before access is granted."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records relating to Criminal Class A and military offense records of more than 1 year or death are destroyed 5 years from entry into database or term of confinement whichever is later. Criminal Class B and military offense records are destroyed 3 years after entry into database or term of confinement, whichever is later. Refer to State Criminal Code for definition of Class A and Class B offenses.

Military offense records, other than Article 15, Non-Judicial Punishment, are destroyed 3 years after entry into database. Article 15 records are destroyed 6 months after entry into database; and records on acquittals, set aside actions and unfounded allegations are immediately destroyed after action is completed.

Private vehicle registrations, financial responsibility and ownership records are destroyed after departure of registrant on Permanent Change of Station (PCS), termination of individual vehicle registration, or re-registration of vehicles. Military registration and certificate of title of motor vehicle records are destroyed 1 year after termination of registration, sale, transfer of ownership, shipment of vehicle to the United States or other country, unless retention is required by joint service and/or host country agreement or arrangement.

Identification credentials, records for identifying personnel permitted to enter Air Force Installations, and restricted area badges are destroyed immediately if not to be reissued. Loss, theft or destruction of identification credentials/passes are destroyed after 1 year. Records pertaining to barred personnel are destroyed 3 years after removal from the barred list. Security police activities reports, traffic reports, tickets or violation notices at Head Quarters Air Force Security Forces Center (HQ AFSFC) are destroyed after 2 years.

Records pertaining to complaints, incident investigation, and pick up/restriction orders are destroyed after 3 years. Entry control files are destroyed 2 years after final entry or after date of document, as appropriate. Physical security check records, security container check record, firearm/ammunition inventory records, field interviews are destroyed after 3 months. USAF employee firearm authorization and related records are destroyed 2 years after expiration or revocation. Criminal Justice Computer Terminal System (CJCTS) records at Security Forces are destroyed after 3 years, or when all entries on the form are deleted from the National Crime Information Center (NCIC) computer, whichever is later.

Audit trails are archived weekly and retained in a production storage area and are destroyed after 1 year. All records are destroyed automatically by being deleted from the system after the destruction date."

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RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information obtained from individuals; Department of Defense (DoD) and civilian law enforcement authorities, Air Force security personnel, court-martials, correctional institutions and facilities personnel, and Air Force Office of Personnel & Management."

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F031 AF SF B

SYSTEM NAME:

Security Forces Management Information System (SFMIS).

SYSTEM LOCATION:

Defense Information Systems Agency (DISA) Mega Center, Building 857, 401 E. Drive, Maxwell Air Force Base-Gunter Annex, AL 36114–3001; security forces units at all levels can access the system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in incidents and accidents occurring on Air Force (AF) installations, or reportable incidents occurring off base. Including all Active Duty Military personnel, Reserve and Guard; Department of Defense (DoD) civilians and contractors. Retirees, who may be victims, witnesses, complainants, offenders, suspects, drivers; individuals who have had tickets issued on base, or had their license suspended or revoked; individuals barred from the installation; and persons possessing a licensed firearm are part of the system.

Additionally, the system includes visitors to the installation, individuals requiring access to controlled and/or restricted areas, civilians applying for Federal employment, and individuals who have weapons training and qualifications, or store firearms in an approved government facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); date of birth; place of birth; home address and phone number; alias; race; ethnicity; sex; marital status; identifying marks, such as tattoos and scars; height, weight, eye, and hair color.

The date, location, nature and details of the incident or offense that include if alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; suspension, revocation or debarment records. Information in the system includes if there is a bias against any particular group involved; if offense involved sexual harassment; actions taken by military commanders that include administrative and/or non-judicial measures, including sanctions imposed. Referral actions, court-martial results and punishments imposed. Confinement information, that consists of location of correctional facility, gang/cult affiliation if applicable; and release, parole, clemency eligibility dates.

Additionally, this system includes information on individuals Permanent Change of Station (PCS), rank, duty status and date, assignment state and country, base, current unit of assignment, office symbol and duty phone. Information is also collected on the Primary Air Force Specialty Code (PAFSC), Duty Air Force Specialty Code (DAFSC), Control Air Force Specialty Code (CAFSC), Army Post Office (APO) Address, date eligible to return from overseas (DEROS) data, gaining base and organization, date entered country, history, personally owned weapons, the individual's weapons training status and information, fingerprint images and demographic data, and accident reporting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 18 U.S.C. 922 note, Unlawful Acts note referring to the Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Judiciary and Judicial Procedures, note referring to the Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 *et seq.,* Crime Victims Fund; and Amendment to Lautenberg, 18 U.S.C. 922(d)(9) Unlawful Acts; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); Air Force Instruction 31–203, Security Forces Management Information System; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Serves as a repository of criminal and specified other non-criminal incidents

used to satisfy statutory and regulatory reporting requirements, specifically crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; provides personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act.

The system is the primary host of all United States Air Force (USAF) vehicle and private weapon registration, visitor pass and restricted area authorization tracking. Other operations include capabilities to track combat arms training and qualifications, that include the last qualified date, score, and next due date by individual weapon and course of fire. Weapon maintenance, inventory control and tracking, modification, inspection, and weapon firing are recorded in the combat arms function, and munitions expenditure.

Tracks the scheduling of range and equipment usage, inspection and maintenance. Certification records for other agencies that utilize the range are maintained in this system. Most recently, it provides a direct interface with the National Crime Information Center (NCIC) and Integrated Automated Fingerprint Identification System (IAFIS) as hosted by the Federal Bureau of Investigations (FBI) via the Criminal Justice Information System (CJIS).

The system hosts Federal Application User Fee (FAUF) transactions for civilians applying for federal employment. FAUF is a format required for any branches of the U.S. military in connection with individual's enlisting, Officer Candidate School, federal agencies in connection with employment, security updates, or contract personnel. This module includes an Office of Personnel Management (OPM) FAUF transaction used to transmit FAUF transactions to the Air Force Office of Personnel & Management. Additionally, the system tracks accident reporting, providing user input and tracking for traffic accidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the Department of Defense (DoD) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice for criminal reporting purposes and as required by the Brady Handgun Violence Prevention Act.

To courts and State, local, and foreign law enforcement agencies for valid judicial proceedings.

To victims and witnesses to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims Rights and Restitution Act of 1990.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records may be stored on paper and/or electronic storage media.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by individuals responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Administrators ensure members requiring access sign and acknowledge systems rules of behavior document that outlines security responsibilities before access is granted.

RETENTION AND DISPOSAL:

Records relating to Criminal Class A and military offense records of more than 1 year or death are destroyed 5 years from entry into database or term of confinement whichever is later. Criminal Class B and military offense records are destroyed 3 years after entry into database or term of confinement, whichever is later. Refer to State Criminal Code for definition of Class A and Class B offenses.

Military offense records, other than Article 15, Non-Judicial Punishment, are destroyed 3 years after entry into database. Article 15 records are destroyed 6 months after entry into database; and records on acquittals, set aside actions and unfounded allegations are immediately destroyed after action is completed.

Private vehicle registrations, financial responsibility and ownership records are destroyed after departure of registrant on Permanent Change of Station (PCS), termination of individual vehicle registration, or re-registration of vehicles. Military registration and certificate of title of motor vehicle records are destroyed 1 year after termination of registration, sale, transfer of ownership, shipment of vehicle to the United States or other country, unless retention is required by joint service and/or host country agreement or arrangement.

Identification credentials, records for identifying personnel permitted to enter Air Force Installations, and restricted area badges are destroyed immediately if not to be reissued. Loss, theft or destruction of identification credentials/passes are destroyed after 1 year. Records pertaining to barred personnel are destroyed 3 years after removal from the barred list. Security police activities reports, traffic reports, tickets or violation notices at Head Quarters Air Force Security Forces Center (HQ AFSFC) are destroyed after 2 years.

Records pertaining to complaints, incident investigation, and pick up/restriction orders are destroyed after 3 years. Entry control files are destroyed 2 years after final entry or after date of document, as appropriate. Physical security check records, security container check record, firearm/ammunition inventory records, field interviews are destroyed after 3 months. USAF employee firearm authorization and related records are destroyed 2 years after expiration or revocation. Criminal Justice Computer Terminal System (CJCTS) records at Security Forces are destroyed after 3 years, or when all entries on the form are deleted from the National Crime Information Center (NCIC) computer, whichever is later.

Audit trails are archived weekly and retained in a production storage area and are destroyed after 1 year. All records are destroyed automatically by being deleted from the system after the destruction date.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in the system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or the system manager at Headquarters Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals requesting entry onto an installation must refer to local installation Base Entry Procedures for access to the installation. At a minimum, individuals must identify themselves by full name, rank, home address, Social Security Number (SSN) and present a military ID, valid driver's license, or some other form of identification, whether you are submitting the request in writing or appearing in person.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or the system manager at Headquarters Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals requesting entry onto an installation must refer to local installation Base Entry Procedures for access to the installation. At a minimum, individuals must identify themselves by full name, rank, home address, Social Security Number (SSN) and present a military ID, valid driver's license, or some other form of identification, whether you are submitting the request in writing or appearing in person.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals; Department of Defense (DoD) and civilian law enforcement authorities, Air Force security personnel, court-martials, correctional institutions and facilities personnel, and Air Force Office of Personnel & Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 2010–5954 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army is proposing to alter a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 19, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 4, 2010, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," (February 20, 1996; 61 FR 6427).

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–20 DCS, G–1

SYSTEM NAME:

Sexual Assault Data Management System (SADMS) (January 8, 2007; 72 FR 742).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Sexual Assault (SADMS) and Sexual Harassment (SHARP) Program Records."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Any uniformed member of the Army, DoD Civilian and/or DoD Contractor personnel accompanying our armed forces as integral parts of a unified mission who has been identified as the victim of a sexual assault.

Any person who has been identified as the victim of a sexual assault allegedly committed by a uniformed member of the Army, a DoD Civilian or DoD Contractor accompanying our armed forces as integral parts of a unified mission.

Any person who has been titled, by a law enforcement agency, as the perpetrator of an alleged sexual assault against a uniformed member of the Army, a DoD Civilian or DoD Contractor accompanying our armed forces as integral parts of a unified mission.

Any uniformed member of the Army, DoD Civilian and/or DoD Contractor accompanying our armed forces as integral parts of a unified mission, contractor, or civilian employee who has been Titled, by a Law Enforcement Agency as the perpetrator of an alleged sexual assault.

Any victim or offender identified in a report of sexual assault investigated by the Criminal Investigation Command (CID).

Any uniformed member of the Army, DoD Civilian and/or DoD Contractor personnel accompanying our armed forces as integral parts of a unified mission who has reported a military sexual harassment complaint. Any person who has been identified as the subject in a military sexual harassment allegation by a uniformed member of the Army, a DoD Civilian or DoD Contractor accompanying our armed forces as integral parts of a unified mission."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name; Social Security Number (SSN); date of

birth; rank or status; demographic information; investigation related information relating to a sexual assault or sexual harassment incident; initial and final treatment dates and aggregate count of intermediate medical treatment contacts with the victim (only for those victims who are uniformed members of the Army and elect unrestricted reporting); information from records/reports relating to victim support extended by installation and/or unit advocates; and actions taken by commanders against offenders. Where a sexual assault victim elects confidential or "restricted" sexual assault reporting pursuant to the DoD confidentiality policy that went into effect June 14, 2005, victim personal identifying information will not be maintained within the systems, and by default, there will be no investigative or legal disposition of alleged offender information maintained within the system."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Pub. L. 108–375, Section 577; 10 U.S.C. 3013, Secretary of the Army; DoD Directive 1030.1, Victim and Witness Assistance; AR 27–10 Military Justice; DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program; AR 40–66 Medical Record Administration and Health Care Documentation; AR 195–2 Criminal Investigation Activities; AR 600–20, Army Command Policy; AR 608–18, Family Advocacy Program DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To provide a web-based case reporting tool for the submission of relevant data to the Sexual Assault Data Management System (SADMS) and a centralized repository of relevant data regarding the entire lifecycle of sexual assault cases, involving victims and/or alleged offenders who are members of the Army (either the victim and/or alleged offender(s) must be a uniformed member of the Army and/or DoD Civilians and/or DoD Contractor personnel and either the victim and/or alleged offender(s) must serve or accompany our armed forces as integral parts of the unified mission). To enhance compilation and accuracy of statistical data and management reports to enable Sexual Harassment/Assault Response and Prevention Program (SHARP) leaders to assess the effectiveness of both response and prevention and make fact-based changes to policy and procedures on the strength of this analysis. The system also stores training documentation for all personnel whose duties pertain to sexual assault and sexual harassment reporting and documentation."

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

SAFEGUARDS:

Delete entry and replace with "All records are maintained in areas accessible only to authorized personnel who have an official need-to-know in the performance of their assigned duties. Automated records are further protected by assignment of user identification and password to protect the system from unauthorized access. User identification and passwords are validated through a Public Key Infrastructure (PKI) and utilize a Common Access Card (CAC). The system employs a Secure Socket Layer (SSL) certificate and 128 bit encryption to provide further protection from unauthorized access to personal data. During non-duty hours, physical security will be provided by the military police Pentagon Force Protection Agency Police, or contract guard patrols to ensure protection against unauthorized access."

RETENTION AND DISPOSAL:

Delete entry and replace with "Sexual Assault Data Management System (SADMS) Master File:

Disposition: Keep in current file area until no longer needed for conducting business, then retire to Records Holding Area/Army Electronic Archives (RHA/AEA). The RHA/AEA will destroy the record when the record is 60 years old. Unrestricted reports will be maintained for 40 years, unless there is no authoritative source data other than the data provided by advocacy (Sexual Assault Response Coordinator/Victim Advocate). Sexual Harassment/Assault Response and Prevention (SHARP) program Standard Reports:

Disposition: Keep in current file area until the data has been archived, then until no longer needed for conducting business, and then retire to Records Holding Area/Army Electronic Archives (RHA/AEA). The RHA/AEA will destroy the record in 5 years.

SEXUAL HARASSMENT RECORDS:

Disposition pending until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Human Relations Policy Directorate, Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR, 300 Army Pentagon, Washington, DC 20310–0300."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in these systems should address written inquiries to Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR, 300 Army Pentagon, Washington, DC 20310–0300.

For verification purposes, individual should provide their full name, Social Security Number (SSN), current address and telephone number and other personal identifying data that would assist in locating the records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)"."

RECORDS ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to

information about themselves contained in this system should address written inquiries to the Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR–HF, 300 Army Pentagon, Washington, DC 20310–0300.

For verification purposes, individual should provide their full name, Social Security Number (SSN), current address and telephone number and other personal identifying data that would assist in locating the records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)"."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Army Criminal Investigation Intelligence System (ACI2); Central Operations Police Suite (COPS); Sexual Assault Response Program Tracking Application (SARPTA); Sexual Harassment/Assault Response and Prevention (SHARP); Army Court Martial Information System (ACMIS); Defense Eligibility and Enrollment Reporting System (DEERS); Defense Manpower Data Center (DMDC); Total Army Personnel Data Base (TAPDB); Defense Integrated Military Human Resources System (DIMHRS); Army Human Resources Data Repository; Army Civilian Personnel Records System (ACPERS); Defense Civilian Personnel Data System (DCPDS); Contractor Verification System (CVS); Synchronized Personnel Operational Tracker (SPOT); Civilian Tracking System (CIVTRACKS); Deployed Theater Accountability System (DTAS) (unclass only); Interim Reporting Solution workbook; Department of Justice (DOJ); the Army Force Management Support Web-based Army Authorization Document System (FMSWeb, previously WebTAADS); and the Equal Opportunity Reporting System (EORS). HQDA, G–1, SHARP Program Office will coordinate the extent and scope of official Army systems data that will be incorporated into the Sexual Harassment/Assault Response and Prevention program."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "This system of records is a compilation of information from other Department of Defense/Army systems of records. To the extent that copies of exempt records from those other systems of records are entered into this system of records, the Army G–1 hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

* * * * *

A0600–20 DCS, G–1

SYSTEM NAME:

Sexual Assault (SADMS) and Sexual Harassment (SHARP) Program Records.

SYSTEM LOCATION:

Headquarters, Department of the Army, Staff and field operating agencies, major commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any uniformed member of the Army, DoD Civilian and/or DoD Contractor personnel accompanying our armed forces as integral parts of a unified mission who has been identified as the victim of a sexual assault.

Any person who has been identified as the victim of a sexual assault allegedly committed by a uniformed member of the Army, a DoD Civilian or DoD Contractor accompanying our armed forces as integral parts of a unified mission.

Any person who has been titled, by a law enforcement agency, as the perpetrator of an alleged sexual assault against a uniformed member of the Army, a DoD Civilian or DoD Contractor accompanying our armed forces as integral parts of a unified mission.

Any uniformed member of the Army, DoD Civilian and/or DoD Contractor accompanying our armed forces as integral parts of a unified mission, contractor, or civilian employee who has been Titled, by a Law Enforcement Agency as the perpetrator of an alleged sexual assault.

Any victim or offender identified in a report of sexual assault investigated by the Criminal Investigation Command (CID).

Any uniformed member of the Army, DoD Civilian and/or DoD Contractor personnel accompanying our armed forces as integral parts of a unified mission who has reported a military sexual harassment complaint. Any person who has been identified as the subject in a military sexual harassment allegation by a uniformed member of the Army, a DoD Civilian or DoD Contractor accompanying our armed forces as integral parts of a unified mission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); date of birth; rank or status; demographic information; investigation information relating to a sexual assault or sexual harassment incident; initial and final treatment dates and aggregate count of intermediate medical treatment contacts with the victim (only for those victims who are uniformed members of the Army and elect unrestricted reporting); information from records/reports relating to victim support extended by installation and/or unit advocates; and actions taken by commanders against offenders. Note: Where a sexual assault victim elects confidential or "restricted" sexual assault reporting pursuant to the DoD confidentiality policy that went into effect June 14, 2005, victim personal identifying information will not be maintained within the systems, and by default, there will be no investigative or legal disposition of alleged offender information maintained within the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Public Law 108–375, Section 577; DoD Directive 1030.1, Victim and Witness Assistance; AR 27–10 Military Justice; DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program; AR 40–66 Medical Record Administration and Health Care Documentation; AR 195–2 Criminal Investigation Activities; AR 600–20, Army Command Policy; AR 608–18, Family Advocacy Program DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To provide a Web-based case reporting tool for the submission of relevant data to the Sexual Assault Data Management System (SADMS) and a centralized repository of relevant data regarding the entire lifecycle of sexual assault cases, involving victims and/or

alleged offenders who are members of the Army (either the victim and/or alleged offender(s) must be a uniformed member of the Army and/or DoD Civilians and/or DoD Contractor personnel and either the victim and/or alleged offender(s) must serve or accompany our armed forces as integral parts of the unified mission). To enhance compilation and accuracy of statistical data and management reports to enable Sexual Harassment/Assault Response and Prevention Program (SHARP) leaders to assess the effectiveness of both response and prevention and make fact-based changes to policy and procedures on the strength of this analysis. The system also stores training documentation for all personnel whose duties pertain to sexual assault and sexual harassment reporting and documentation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have an official need-to-know in the performance of their assigned duties. Automated records are further protected by assignment of user identification and password to protect the system from unauthorized access. User identification and passwords are validated through a Public Key Infrastructure (PKI) and utilize a Common Access Card (CAC). The system employs a Secure Socket Layer (SSL) certificate and 128 bit encryption to provide further protection from unauthorized access to personal data. During non-duty hours, physical security will be provided by the military police Pentagon Force Protection Agency Police, or contract guard patrols to ensure protection against unauthorized access.

RETENTION AND DISPOSAL:

SEXUAL ASSAULT DATA MANAGEMENT SYSTEM (SADMS) MASTER FILE:

Disposition: Keep in current file area until no longer needed for conducting business, then retire to Records Holding Area/Army Electronic Archives (RHA/AEA). The RHA/AEA will destroy the record when the record is 60 years old. Unrestricted reports will be maintained for 40 years, unless there is no authoritative source data other than the data provided by advocacy (Sexual Assault Response Coordinator/Victim Advocate). Sexual Harassment/Assault Response and Prevention (SHARP) program Standard Reports:

Disposition: Keep in current file area until the data has been archived, then until no longer needed for conducting business, and then retire to Records Holding Area/Army Electronic Archives (RHA/AEA). The RHA/AEA will destroy the record in 5 years.

SEXUAL HARASSMENT RECORDS:

Disposition pending until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Relations Policy Directorate, Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in these systems should address written inquiries to Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR, 300 Army Pentagon, Washington, DC 20310–0300.

For verification purposes, individual should provide their full name, Social Security Number (SSN), current address and telephone number and other personal identifying data that would assist in locating the records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

RECORDS ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR–HF, 300 Army Pentagon, Washington, DC 20310–0300.

For verification purposes, individual should provide their full name, Social Security Number (SSN), current address and telephone number and other personal identifying data that would assist in locating the records.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Army Criminal Investigation Intelligence System (ACI2); Central Operations Police Suite (COPS); Sexual Assault Response Program Tracking Application (SARPTA); Sexual Harassment/Assault Response and Prevention (SHARP); Army Court Martial Information System (ACMIS); Defense Eligibility and Enrollment Reporting System (DEERS); Defense Manpower Data Center (DMDC); Total Army Personnel Data Base (TAPDB); Defense Integrated Military Human

Resources System (DIMHRS); Army Human Resources Data Repository; Army Civilian Personnel Records System (ACPERS); Defense Civilian Personnel Data System (DCPDS); Contractor Verification System (CVS); Synchronized Personnel Operational Tracker (SPOT); Civilian Tracking System (CIVTRACKS); Deployed Theater Accountability System (DTAS) (unclass only); Interim Reporting Solution workbook; Department of Justice (DOJ); the Army Force Management Support Web-based Army Authorization Document System (FMSWeb, previously WebTAADS); and the Equal Opportunity Reporting System (EORS). HQDA, G–1, SHARP Program Office will coordinate the extent and scope of official Army systems data that will be incorporated into the Sexual Harassment/Assault Response and Prevention program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system of records is a compilation of information from other Department of Defense/Army systems of records. To the extent that copies of exempt records from those other systems of records are entered into this system of records, the Army G–1 hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 2010–5961 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army proposes to alter a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 19, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 4, 2010 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" (February 20, 1996; 61 FR 6427).

Dated: March 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0715–9 DCS, G–4 DoD

SYSTEM NAME:

Synchronized Predeployment and Operational Tracker (SPOT) Records (July 29, 2008; 73 FR 43918).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "U.S. Army Acquisition, Logistics and Technology Enterprise Systems and Services (ALTESS), PD ALTESS, Caller Service 4, RFAAP, Building 450, Radford, VA 24143–0004.

DISA DECC, 3990 E. Broad Street, Bldg 23, Columbus, OH 43213–1152 or similar certified Defense/Federal Network Enclave facility. Official mailing addresses may be obtained from the system manager below."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "INDIVIDUAL PROFILE DATA: Full name of the individual; Social Security Number (SSN) or federal/foreign identification number; home, office, and deployed telephone numbers; home and deployed address; home, office name, and deployed e-mail addresses; emergency contact name and telephone numbers; next of kin name, phone number and address; common access or identification card user identification; blood type; location and duty station; predeployment medical and dental records.

CONTRACT INFORMATION DATA: Contract number, contract capabilities and contractor organization name, along with employer's contact name, address and telephone number.

TRAVEL INFORMATION DATA: Air travel itineraries and movements in Theater of Operations; passport and/or visa number; clearance level; trip information (e.g., destinations and reservation information); travel authorization documentation (e.g., Government orders or letters of authorization); trip dates; and predeployment processing information including training completed certifications.

WORK AND EDUCATION EXPERIENCE DATA: Educational level achieved, and specialized education or training obtained outside of Federal service. Federal service and documenting work experience and specialized education received while employed. Such records contain information about past and present positions held; grades, salaries, duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, office approval of disability retirement date and retirement applications.

MISCELLANEOUS DATA: Authorized weapons and equipment, and other official deployment-related information."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, National Defense Appropriations Acts (NDAA) 2008, Section 861; Homeland Security Presidential Directive/HSPD–12; 10 U.S.C. 3018, Secretary of Army; DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces; DoD Directive 3020.49, Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution; DoD Instruction 3020.50, Private Security Contractors (PSCs) Operating in Contingency Operations; DoD Directive 1404.10, DoD Civilian Expeditionary Workforce; DoD Directive 1000.25, DoD Personnel Identity Protection (PIP) Program; DoD Instruction 6490.3, Deployment Health; DoD Instruction 8910.01, Information Collection and Reporting; Army Regulation 715–9, Contractors Accompanying the Force and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "Information will be used to plan, manage, account for, monitor and report on contracts, their capabilities, contractors and other individuals supporting the Federal Government during planning and operation of any contingency activity. This information will be used to analyze and correlate relationships between requirements and planned actions. Information will also be used to support Department of Defense, Department of State, other federal agencies, coalition partners and the private sector."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies, federal contractors and applicable civilian organizations to account for personnel located in a contingency area to determine status of processing and deployment documentation, contracts, weapons and equipment, current and historical locations, organizations they work for and contact information.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system."

* * * * *

RETRIEVABILITY:

Delete and replace with "Name and last four digits of the Social Security Number (SSN)."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete "22060" and replace with "22060–5527".

NOTIFICATION PROCEDURE:

Delete and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Materiel Command, Plans & Operations Division, AMCOPS–CP, 9301 Chapek Road, Ft. Belvoir, VA 22060–5527.

Requests should contain the individual's full name, four digits of the Social Security Number (SSN), current address, telephone number, when and where they were assigned during the contingency and signature."

RECORD ACCESS PROCEDURES:

Delete with and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to Commander, U.S. Army Materiel Command, Plans & Operations Division, AMCOPS–CP, 9301 Chapek Road, Ft. Belvoir, VA 22060–5527.

Requests should contain the individual's full name, last four digits of the Social Security Number (SSN), current address, telephone number, when and where they were assigned during the contingency and signature."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Records and reports of contingency contracts, contingency support, and contractors authorized to accompany the U.S. Armed Forces, Homeland Security Presidential Directive—12 (HSPD–12) compliant credentials, and known locations in a Joint Operational Area."

* * * * *

A0715–9 DCS, G–4 DoD

SYSTEM NAME:

Synchronized Predeployment and Operational Tracker (SPOT) Records

SYSTEM LOCATION:

U.S. Army Acquisition, Logistics and Technology Enterprise Systems and Services (ALTESS), PD ALTESS, Caller Service 4, RFAAP, Building 450, Radford, VA 24143–0004.

DISA DECC, 3990 E. Broad Street, Bldg 23, Columbus, OH 43213–1152 or similar certified Defense/Federal Network Enclave facility. Official mailing addresses may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian employees, dependents, contractors and non-governmental organization personnel, volunteers, partner agencies personnel and members of the public who are supporting planned, ongoing, and historical contingency operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

INDIVIDUAL PROFILE DATA: Full name of the individual; Social Security Number (SSN) or federal/foreign identification number; home, office, and deployed telephone numbers; home and deployed address; home, office name, and deployed e-mail addresses; emergency contact name and telephone numbers; next of kin name, phone number and address; common access or identification card user identification; blood type; location and duty station; predeployment medical and dental records.

CONTRACT INFORMATION DATA: Contract number, contract capabilities and contractor organization name, along with employer's contact name, address and telephone number.

TRAVEL INFORMATION DATA: Air travel itineraries and movements in Theater of Operations; passport and/or visa number; clearance level; trip information (e.g., destinations and reservation information); travel authorization documentation (e.g., Government orders or letters of authorization); trip dates; and predeployment processing information including training completed certifications.

WORK AND EDUCATION EXPERIENCE DATA: Educational level achieved, and specialized education or training obtained outside of Federal service. Federal service and documenting work experience and specialized education received while employed. Such records contain information about past and present positions held; grades, salaries, duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, office approval of disability retirement date and retirement applications.

MISCELLANEOUS DATA: Authorized weapons and equipment, and other official deployment-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, National Defense Appropriations Acts (NDAA) 2008, Section 861; Homeland Security Presidential Directive/HSPD–12; 10 U.S.C. 3018, Secretary of Army; DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces; DoD Directive 3020.49, Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution; DoD Instruction 3020.50, Private Security Contractors (PSCs) Operating in Contingency Operations; DoD Directive 1404.10, DoD Civilian Expeditionary Workforce; DoD Directive 1000.25, DoD Personnel Identity Protection (PIP) Program; DoD Instruction 6490.3, Deployment Health; DoD Instruction 8910.01, Information Collection and Reporting; Army Regulation 715–9, Contractors Accompanying the Force and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information will be used to plan, manage, account for, monitor and report on contracts, their capabilities, contractors and other individuals supporting the Federal Government during planning and operation of any contingency activity. This information will be used to analyze and correlate relationships between requirements and planned actions. Information will also be used to support Department of Defense, Department of State, other Federal agencies, coalition partners and the private sector.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies, federal contractors and applicable civilian organizations to account for personnel located in a contingency area to determine status of processing and deployment documentation, contracts, weapons and equipment, current and historical locations, organizations they work for and contact information.

The DoD "Blanket Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and last four digits of the Social Security Number (SSN).

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of lock, guards, and administrative procedures. Access to any specific record is based on the need-to-know and the specific level of authorization granted to the user. Physical and electronic access is restricted to designated individuals having a need-to-know in the performance of official duties. Access to personal information is further restricted by the use of login/password authorization. Information is accessible only by authorized personnel with appropriate clearance/access in the performance of their duties. Records retrieved from SPOT only portray the last four digits of the Social Security Number (SSN).

RETENTION AND DISPOSAL:

Permanent. Keep until individual's final deployment is terminated and then retire to the Army Electronic Archives (AEA). The AEA will transfer to the National Archives when the record is 25 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Materiel Command, Plans & Operations Division, AMCOPS–CP, 9301 Chapek Road, Ft. Belvoir, VA 22060–5527.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Materiel Command, Plans & Operations Division, AMCOPS–CP, 9301 Chapek Road, Ft. Belvoir, VA 22060–5527.

Requests should contain the individual's full name, last four digits of the Social Security Number (SSN), current address, telephone number, when and where they were assigned during the contingency and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Commander, U.S. Army Materiel Command, Plans & Operations Division, AMCOPS–CP, 9301 Chapek Road, Ft. Belvoir, VA 22060–5527.

Requests should contain the individual's full name, last four digits of the Social Security Number (SSN), current address, telephone number, when and where they were assigned during the contingency and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505.

RECORD SOURCE CATEGORIES:

Records and reports of contingency contracts, contingency support, and contractors authorized to accompany the U.S. Armed Forces, Homeland Security Presidential Directive—12 (HSPD–12) compliant credentials, and known locations in a Joint Operational Area.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–5953 Filed 3–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 19, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

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. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 15, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Asian American and Native American Pacific Islander-serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.
Burden Hours: 2,005.

Abstract: The program was established under Title III, Part A, Section 320 of the Higher Education Opportunity Act (HEOA) of 2008 and is authorized by Title III, Part A, Section 320 of the HEOA, as amended. The program awards discretionary grants to eligible institutions of higher education so that they might increase self-sufficiency by improving academic programs, institutional management, and fiscal stability.

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.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4209. 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 when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–5974 Filed 3–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; Migrant and Seasonal Farmworkers Program

Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.128G.

Dates:

Applications Available: April 2, 2010.

Deadline for Transmittal of Applications: May 17, 2010.

Deadline for Intergovernmental Review: July 16, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Migrant and Seasonal Farmworkers Program is to provide grants for vocational rehabilitation (VR) services to individuals with disabilities who are migrant and seasonal farmworkers, as determined in accordance with rules prescribed by the Secretary of Labor, and to the family members who are residing with such individuals (whether or not such family members are individuals with disabilities).

Program Authority: 29 U.S.C. 774.

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 in 34 CFR part 369.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $461,700.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $140,000–$160,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State designated agencies (interpreted to mean designated State agencies as defined in section 7(8) of the Rehabilitation Act of 1973, as amended); nonprofit agencies working in collaboration with a State designated agency; and local agencies working in collaboration with a State designated agency.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Migrant and Seasonal Farmworkers Program. *See* 29 U.S.C. 774(a)(1).

IV. Application and Submission Information

1. *Address to Request Application Package:* 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 package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

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.

3. *Submission Dates and Times:*

Applications Available: March 18, 2010.

Deadline for Transmittal of Applications: May 17, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *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: July 16, 2010.

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 this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Migrant and Seasonal Farmworkers Program—CFDA Number 84.128G must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursday, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirements, as described elsewhere in the section, and submit your application in paper format.

• 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. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph 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.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be

sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sonja T. Turner, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5089, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7592.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.128G), 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.128G), 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 grant 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

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

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:* 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:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration (RSA) has established the following performance measures for the Migrant and Seasonal Farmworkers Program and will use these measures to assess the effectiveness of the program:

- Total number of migrant and seasonal farmworkers with disabilities who receive VR services from the project each reporting period.
- Total number of migrant and seasonal farmworkers with disabilities in the project who also receive VR services from the designated State unit (the State VR agency) each reporting period.
- Total number of migrant and seasonal farmworkers with disabilities in the project who achieved employment outcomes each reporting period (an employment outcome refers to maintaining employment for at least 90 consecutive days).

• Total number of migrant and seasonal farmworkers with disabilities served by the project who exited the project each reporting period without achieving an employment outcome.

• Total number of migrant and seasonal farmworkers with disabilities served by the project who exited the project each reporting period without achieving an employment outcome but who transfer to another State.

• Percentage of migrant and seasonal farmworkers with disabilities served by the project who achieved employment outcomes each reporting period (number of migrant and seasonal farmworkers with disabilities served by the project who achieved employment outcomes each reporting period divided by the number of migrant and seasonal farmworkers with disabilities who received services through the project that reporting period).

• Total number of migrant and seasonal farmworkers with disabilities served by the project who remain employed three months after achieving an employment outcome.

• Annual cost per participant who achieved an employment outcome (annual cost refers to the annual Federal funds awarded to the project divided by the actual number of migrant and seasonal farmworkers in the project who achieved employment outcomes that reporting period).

Each grantee must annually report on these measures in its annual performance report. We require reporting of annual performance measures at the time of the continuation award processing to ensure that grantees report information for individuals served exclusively by their project.

VII. Agency Contact

For Further Information Contact: Sonja T. Turner, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5089, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7557 or by e-mail: *sonja.turner@ed.gov*.

If you use a TDD, call the 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: March 15, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–5976 Filed 3–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from July 1, 2009 through September 30, 2009.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Laura Duos or Mary Louise Dirrigl. Telephone: (202) 245–7468.

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

Individuals with disabilities can obtain a copy of this notice in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2009 through September 30, 2009.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Children in Private Schools

○ Letter dated September 25, 2009 to Impartial Hearing Officer Sinai Halberstam, clarifying that the U.S. Supreme Court's ruling in *Forest Grove School District* v. *T.A.,* 129 S.Ct. 2484 (2009) is consistent with the Department's regulations governing children with disabilities enrolled in private schools by their parents.

Topic Addressed: Participation in Assessments

○ Letter dated August 25, 2009 to individual (personally identifiable information redacted), regarding the use of a portfolio assessment as an alternate assessment.

○ Letter dated September 23, 2009 to Texas Education Agency General Counsel David Anderson, clarifying when students with disabilities incarcerated in State and local juvenile or adult correctional facilities must participate in Statewide assessments.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Use of Federal Funds

○ Letter dated September 25, 2009 to Fiscal and Policy Advisor for Greater California Special Education Fiscal Support Alliance J. Sarge Kennedy, regarding the excess costs, supplement not supplant, and local educational agency (LEA) maintenance of effort requirements in Part B of the IDEA.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations, Parental Consent, and Reevaluations

○ Letter dated August 24, 2009 to New York attorney Tara Moffett,

regarding whether a school district is required to conduct additional testing of a child with a disability in order for that child to receive accommodations on the Scholastic Aptitude Test (SAT) or American College Test (ACT).

Topic Addressed: Revocation of Consent

○ Letter dated August 21, 2009 to Virginia Assistant Superintendent for Special Education and Student Services H. Douglas Cox, regarding what LEAs are required to do when parents, both of whom have legal authority to make educational decisions for their child, disagree on the revocation of consent for special education and related services.

Topic Addressed: Individualized Education Programs

○ Letter dated August 21, 2009 to Maryland Assistant State Superintendent for the Division of Special Education/Early Intervention Services Carol Ann Heath, denying the request to waive the requirement for a measurable postsecondary goal in employment for students with disabilities who have severe medical conditions and developmental needs and denying the State's request to exclude data on this population of students when reporting on the relevant State Performance Plan/Annual Performance Report indicator.

Section 615—Procedural Safeguards

Topic Addressed: Discipline Procedures

○ Letter dated August 21, 2009 to New Jersey attorney Rotimi Owoh, clarifying when a LEA is required to conduct a manifestation determination review prior to a short-term disciplinary removal of a child with a disability.

Other Letters That Do Not Interpret Idea But May Be of Interest to Readers

Topic Addressed: Seclusion and Restraints

○ Letter dated July 31, 2009 to Chief State School Officers from Secretary of Education Arne Duncan, encouraging schools to review and, if appropriate, revise their current policies and guidelines on the use of seclusion and restraints in schools to ensure that every student is safe and protected from unnecessary or inappropriate restraint or seclusion.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: March 12, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–5977 Filed 3–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Proposed Waivers for the Comprehensive Centers Program and Funding of Continuation Grants

AGENCY: Office of Elementary and Secondary Education.

ACTION: Notice.

SUMMARY: The Secretary proposes to waive the requirements in 34 CFR 75.250 and 75.261(c)(2) of the Education Department General Administrative Regulations (EDGAR) that, respectively, generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The proposed waivers would enable the 21 current eligible grantees under the Comprehensive Centers program to continue to receive Federal funding beyond the five-year limitation contained in 34 CFR 75.250.

DATES: We must receive your comments on or before April 19, 2010.

ADDRESSES: Address all comments about these proposed waivers to Frances Walter, U.S. Department of Education, 400 Maryland Ave., SW., Room 3W113, Washington, DC 20202–2800. You may provide comments by e-mail addressed to *fran.walter@ed.gov.* You must include the term "Comprehensive Centers Program Waivers" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Frances Walter. *Telephone:* (202) 205–9198 *or via Internet: Fran.walter@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 person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this notice of proposed waivers.

During and after the comment period, you may inspect all public comments about this notice of proposed waivers in Room 3W113, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed waivers. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Under the Comprehensive Centers program, the Department supports grants to operate regional technical assistance centers and national content centers as authorized by sections 203 through 207 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9602). The purpose of these centers is to provide technical assistance to States as States work to help local educational agencies (LEAs) and schools to close achievement gaps in core content areas and raise student achievement in schools, especially to help those in need of improvement (as defined by section 1116(b) of the Elementary and Secondary Act of 1965, as amended (ESEA)) in implementing the school improvement provisions under section 1116 of the ESEA.

Eligible applicants for Comprehensive Center grants are research organizations, institutions, agencies, institutions of higher education, partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in the notice inviting applications published in the **Federal Register** on June 3, 2005 (70 FR 53283) and corrected on June 20, 2005 (70 FR 35415).

We do not believe it would be in the public interest to hold new

competitions under the Comprehensive Centers program until after the Congress has completed the process of reauthorizing the ESEA and the ETAA since the primary work of the Comprehensive Centers is to help States, LEAs, and schools implement key school improvement provisions of the ESEA. We also have concluded that it would be contrary to the public interest to have a lapse in Comprehensive Centers projects pending these reauthorizations. For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(c)(2), which limit the extension of a project period if the extension involves the obligation of additional Federal funds. With these waivers: (1) Current Comprehensive Centers grantees would receive FY 2010 funds and continue to operate through FY 2011 and possibly beyond, if Congress continues to appropriate funds for that purpose, and (2) we would not announce a new competition or make new awards under the Comprehensive Centers program in FY 2010.

The proposed waivers of 34 CFR 75.250 and 75.261(c)(2) would not affect the applicability of the requirements in 34 CFR 75.253 (continuation of a multi-year project after the first budget period) to any current Comprehensive Centers grantee that receives a continuation award as a result of the waivers.

In addition, these proposed waivers would not exempt current Comprehensive Centers grantees from the account-closing provisions in 31 U.S.C. 1552(a), nor would they extend the availability of funds previously awarded to current Comprehensive Centers grantees. Under 31 U.S.C. 1552(a), appropriated funds may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose. The waivers proposed in this notice would not change this requirement.

Making these waivers, therefore, would ensure that the important services provided by the current Comprehensive Centers grantees can be continued, as the Department works on reauthorization of the ETAA and ESEA and designs a Comprehensive Centers program that is clearly aligned with the Department's technical assistance priorities. During this interim period the activities of the current Comprehensive Centers grantees would be modified to support the Department's technical assistance priorities.

We will announce the final waivers, if any, in a notice in the **Federal Register.** We will determine the final waivers after considering responses to this notice and other information available to the Department.

Proposed Waivers—Comprehensive Centers Program

The Secretary proposes to waive the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding five years and extensions of project periods that involve the obligation of additional Federal funds, for the current Comprehensive Centers grantees.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed waivers would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed waivers are:

(a) The FY 2005 grantees currently receiving Federal funds; and

(b) The entities that are eligible for an award under the Comprehensive Centers program (*i.e.,* research organizations, institutions, agencies, institutions of higher education, partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in the notice inviting applications published in the **Federal Register** on June 3, 2005 (70 FR 53283) and corrected on June 20, 2005 (70 FR 35415)).

The Secretary certifies that the proposed waivers would not have a significant economic impact on these entities because the proposed waivers and the activities required to support the additional years of funding would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed waivers would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard for continuation awards.

Paperwork Reduction Act of 1995

This notice of proposed waivers does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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: *www.ed.gov/news/fedregister/index.html.*

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(Catalog of Federal Domestic Assistance Number 84.283B, Comprehensive Centers Program).

Program Authority: 20 U.S.C 99601–99608.

Dated: March 12, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–5978 Filed 3–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Advanced Rehabilitation Research Training (ARRT) Projects

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice reopening the Advanced Rehabilitation Research Training (ARRT) Projects fiscal year (FY) 2010 competition.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133P–1.

SUMMARY: On December 11, 2009, we published in the **Federal Register** (74 FR 65765–65769) a notice inviting applications for the Advanced Rehabilitation Research Training Projects FY 2010 competition. The notice established a February 9, 2010

deadline date for eligible applicants to apply for funding under this program.

The Department of Education announces the reopening of the competition for new awards under National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Advanced Rehabilitation Research Training (ARRT) Projects for Fiscal Year (FY) 2010.

We are establishing a new deadline date for the transmittal of applications. We are taking this action because the recent closure of the U.S. Federal government on February 5, 8, and 9, 2010 due to blizzard conditions in the Mid-Atlantic Region may have interfered with applicants' ability to access needed technical assistance through the e-Grants Help Desk. The reopening is intended to ensure that all potential applicants have the opportunity to submit applications under this competition. If you have already successfully submitted an e-application for this grant competition, you do not need to resubmit your application.

Deadline for Transmittal of Applications: April 1, 2010.

Note: Applications for grants under this program must be submitted electronically using e-Application, accessible through the Department of Education's e-grants Web site at: *http://e-grants.ed.gov.*

For information about how to submit your application electronically, please refer to *Electronic Submission of Application* in the December 11, 2010 notice (74 FR 65765–65769). We encourage applicants to submit their applications as soon as possible to avoid any problems with filing electronic applications on the last day.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6026, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

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

Accessible Format: Individuals with disabilities may obtain this notice 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 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.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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Dated: March 15, 2010.

Alexa Posny,

Assistant Secretary for Office of Special Education and Rehabilitative Services.

[FR Doc. 2010–5975 Filed 3–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 11, 2010.

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

Docket Numbers: ER99–4124–025.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits triennial market power analysis.

Filed Date: 03/08/2010.

Accession Number: 20100311–0018.

Comment Date: 5 p.m. Eastern Time on Friday, May 07, 2010.

Docket Numbers: ER00–2391–013; ER01–1710–012; ER01–2139–015; ER02–1903–014; ER02–2166–012; ER02–2559–013; ER03–1375–009; ER04–187–010; ER04–290–008; ER09–832–008; ER99–2917–014.

Applicants: Doswell Limited Partnership; Mill Run Windpower, LLC; Somerset Windpower, LLC; FPL Energy Marcus Hook, LP; Pennsylvania Windfarms, Inc.; Backbone Mountain Windpower LLC; Waymart Wind Farm LP; North Jersey Energy Associates, a LP; Meyersdale Windpower, LLC; NextEra Energy Power Marketing, LLC; FPL ENERGY MH50, LP.

Description: NextEra Energy Entities Notification of Non-material Change in Status.

Filed Date: 03/11/2010.

Accession Number: 20100311–5027.

Comment Date: 5 p.m. Eastern Time on Thursday, April 01, 2010.

Docket Numbers: ER10–294–001.

Applicants: Xcel Energy Services Inc.

Description: Northern States Power Co submits the Refund Report.

Filed Date: 03/05/2010.

Accession Number: 20100305–0227.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

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

Docket Numbers: RR10–7–000.

Applicants: North American Electric Reliability Corp.

Description: Petition of the North American Electric Reliability Corporation for Approval of Compliance Monitoring and Enforcement Agreements Between SERC Reliability Corporation and Florida Reliability Coordinating Council and Southwest Power Pool Regional Entity.

Filed Date: 03/10/2010.

Accession Number: 20100310–5117.

Comment Date: 5 p.m. Eastern Time on Friday, March 31, 2010.

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

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

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

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

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–5893 Filed 3–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 9, 2010.

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

Docket Numbers: ER03–721–015.

Applicants: New Harquahala Generating Company, LLC.

Description: New Harquahala Generating Company, LLC's Updated Market Power Analysis.

Filed Date: 03/08/2010.

Accession Number: 20100308–5099.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER09–502–004; ER09–666–005; ER09–667–005; ER09–668–005; ER09–669–005; ER09–670–005; ER09–671–005; ER10–702–001.

Applicants: EDF Development Inc., EDFD-Handsome Lake, EDFD-Perryman, EDFD-Keystone, EDFD-Conemaugh, EDFD-C.P. Crane, EDFD-West Valley, EDF Inc.

Description: Triennial Update and Request for Confirmation of EDF Development Inc., *et al.*

Filed Date: 03/08/2010.

Accession Number: 20100308–5124.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–92–004.

Applicants: EDF Trading North America, LLC.

Description: Triennial Update of EDF Trading North America, LLC.

Filed Date: 03/08/2010.

Accession Number: 20100308–5125.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER10–711–001.

Applicants: Respond Power LLC.

Description: Respond Power submits the Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 03/08/2010.

Accession Number: 20100309–0202.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: ER10–843–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Standard Large Generator Interconnection Agreement between SCE, *et al.* and CAISO, Service Agreement 55 under SCE's Transmission Owner Tariff, FERC Electric Tariff *etc.*

Filed Date: 03/08/2010.

Accession Number: 20100308–0213.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: ER10–844–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits a Non-Conforming Service Agreement with the Orlando Utilities Commission.

Filed Date: 03/08/2010.

Accession Number: 20100308–0214.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: ER10–845–000.

Applicants: Alcoa Power Generating Inc.

Description: Alcoa Power Generating Inc submits an amendment to its Electric Rate Schedule FERC No. 19 the Exchange Agreement with Tennessee Valley Authority.

Filed Date: 03/08/2010.

Accession Number: 20100309–0201.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: ER10–846–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corp submits amendments to the Power Sales Agreement with the City of Winter Park, Florida.

Filed Date: 03/08/2010.

Accession Number: 20100309–0203.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

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

Docket Numbers: ES10–28–000.

Applicants: NorthWestern Corporation.

Description: Application of NorthWestern Corporation for Authorization to Issue Securities and Request for Shortened Comment Period.

Filed Date: 03/08/2010.

Accession Number: 20100308–5094.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

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

Docket Numbers: RR08–4–005.

Applicants: North American Electric Reliability Corporation.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to the Order on Violation Severity Levels Proposed by the ERO.

Filed Date: 03/05/2010.

Accession Number: 20100305–5166.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

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

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eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–5894 Filed 3–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

[Case No. CAC–027]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Sanyo North America Corp. and Granting of the Interim Waiver From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Sanyo North America Corp. (Sanyo). The petition for waiver (hereafter "petition") requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to commercial package air-source and water-source central air conditioners and heat pumps. The petition is specific to the Sanyo variable capacity ECO-i (commercial) multi-split heat pumps. Through this document, DOE: (1) Solicits comments, data, and information with respect to the Sanyo petition; and (2) announces the grant of an interim waiver to Sanyo from the existing DOE test procedure for the subject commercial multi-split air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Sanyo petition until, but no later than April 19, 2010.

ADDRESSES: You may submit comments, identified by case number "CAC–027," by any of the following methods:

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

• *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CAC–027], and/or "Sanyo Petition" in the subject line of the message.

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: AS_Waiver_Requests@ee.doe.gov.*

Ms. Betsy Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III, which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A–1 of Title III provides for a similar energy efficiency program titled "Certain Industrial Equipment," which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317).

Today's notice involves commercial equipment under Part A–1. Part A–1 specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part A–1 authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted the International Organization for Standardization (ISO) Standard 13256–1–1998, "Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps," for small commercial package water-source heat pumps with capacities less than 135,000 British thermal units per hour (Btu/h). *Id.* at 71371. For air-source heat pumps, DOE adopted ARI Standard 340/360–2004. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Sanyo's commercial ECO-i multi-split heat pump products at issue in the waiver

petition filed by Sanyo range from 72,000 Btu/h to 288,000 Btu/h. The Sanyo water-source products with capacities greater than or equal to 135,000 Btu/h are not covered by this waiver because the DOE test procedure covers water-source heat pumps with capacities less than 135,000 Btu/h. The cooling capacities of Sanyo's commercial ECO-i air-source multi-split heat pump products also range from 72,000 Btu/h to 288,000 Btu/h. All of these products are covered by this waiver, as ARI Standard 340/360–2004 covers products with capacities greater than 65,000 Btu/hour.

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

II. Petition for Waiver

On January 4, 2010, Sanyo filed a petition for waiver from the test procedures at 10 CFR 431.96 applicable to commercial package air and water-source central air conditioners and heat pumps, as well as an application for interim waiver. The capacities of the Sanyo ECO-i multi-split heat pumps range from 72,000 Btu/h to 288,000 Btu/h. Thus, ISO Standard 13256–1 (1998) is the applicable test procedure for Sanyo's ECO-i multi-split water-source heat pumps with capacities less than 135,000 Btu/h. The applicable test procedure for the air-source heat pumps is ARI 340/360–2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

Sanyo seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its ECO-i multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Sanyo asserts that the two primary factors that prevent testing of its multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. 69 FR 52660 (August 27, 2004) (Mitsubishi waiver); 72 FR 17528 (April 9, 2007) (Mitsubishi waiver); 72 FR 71387 (Dec. 17, 2007) (Samsung waiver); 72 FR 71383 (Dec. 17, 2007) (Fujitsu waiver); 73 FR 39680 (July 10, 2008) (Daikin waiver); 74 FR 15955 (April 8, 2009) (Daikin waiver); 74 FR 16193 (April 9, 2009) (Sanyo waiver); 74 FR 16373 (April 10, 2009) (Daikin waiver)

The ECO-i systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu and Daikin. As indicated above, DOE has already granted waivers for these products. The ECO-i system includes 90 unique outdoor models and 54 unique indoor models, and can connect up to 40 indoor units to a single outdoor unit. There are over one million combinations possible with the Sanyo ECO-i system. Consequently, Sanyo requested that DOE grant a waiver from the applicable test procedures for its ECO-i product designs until a suitable test method can be prescribed.

III. Application for Interim Waiver

On January 4, 2010, Sanyo also submitted an application for an interim waiver. DOE determined that Sanyo's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Sanyo might experience absent a favorable determination on its application for an interim waiver. DOE understands, however, that if it did not issue an interim waiver, Sanyo's products would not be tested and rated for energy consumption on an equal basis with equivalent products for which DOE previously granted waivers. This would place Sanyo at a competitive disadvantage. Furthermore, DOE has determined that it appears likely that Sanyo's petition for waiver will be granted and that is desirable for public policy reasons to grant Sanyo immediate relief pending a determination on the petition for waiver. DOE believes that it is likely Sanyo's petition for waiver for the new ECO-i multi-split models will be granted because, as noted above, DOE has previously granted a number of waivers for similar product designs.[1] The two principal reasons supporting the grant of the previous waivers also apply to Sanyo's ECO-i products: (1) Test laboratories cannot test products with so many indoor units; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. In addition, DOE believes that similar products should be tested and rated for energy consumption on a comparable basis. For these same reasons, DOE also determined that it is desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Therefore, *it is ordered that:*

The application for interim waiver filed by Sanyo is hereby granted for Sanyo's ECO-i multi-split heat pumps, subject to the specifications and conditions below.

1. Sanyo shall not be required to test or rate its ECO-i commercial multi-split products on the basis of the existing test procedures under 10 CFR 431.96, which incorporates by reference ISO Standard 13256–1 (1998) for the water-source products and ARI 340/360–2004 for the air-source products.

[1] DOE notes that it has also previously granted interim waivers to Fujitsu (70 FR 5980 (Feb. 4, 2005)), Samsung (70 FR 9629 (Feb. 28, 2005)), Mitsubishi (72 FR 17533 (April 9, 2007)), and Sanyo (72 FR 35986 (July 2, 2007)), for comparable commercial multi-split air conditioners and heat pumps.

2. Sanyo shall be required to test and rate its ECO-i commercial multi-split products according to the alternate test procedure as set forth in section IV(3), "Alternate test procedure."

The interim waiver applies to the following basic model groups:

ECO-i Series Outdoor Units

ECOi Outdoor Unit Air Source Heat Pump Series (208/230 Volt, 3 Phase, 60 Hz)

- Models CHDX***63 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDXR***63 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.

ECOi Outdoor Unit Air Source Heat Pump Series (460 Volt, 3 Phase, 60 Hz)

- Models CHDX***74 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDXR***74 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.

ECOi Outdoor Unit Air Source Heat Recovery Series (208/230 Volt, 3 Phase, 60 Hz)

- Models CHDZ***63 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDZR***63 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.

ECOi Outdoor Unit Air Source Heat Recovery Series (460 Volt, 3 Phase, 60 Hz)

- Models CHDZ***74 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDZR***74 with capacities ranging from 72,000 to 288,000 Btu/h.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288.

ECOi Outdoor Unit Water Source Heat Recovery Series (208/230 Volt, 3 Phase, 60 Hz)

- Models CHWDZ***63 with capacities ranging from 72,000 to 96,000 Btu/h.
  - ***: 072, 096.

ECOi Outdoor Unit Water Source Heat Recovery Series (460 Volt, 3 Phase, 60 Hz)

- Models CHWDZ***74 with capacities ranging from 72,000 to 96,000 Btu/h.
  - ***: 072, 096.

Compatible Indoor Units For Above Listed Outdoor Units

- UMHX**62 series low profile concealed ducted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000 and 18,000 Btu/h.
- UHX**62 series low-medium static concealed ducted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000, 24,000, 36,000, 48,000 and 54,000 Btu/h.
- DHX**52 series medium-high static concealed ducted with nominally rated capacities of 36,000 and 48,000 Btu/h.
- XMHX**52 series four way cassette with nominally rated capacities of 12,000 and 18,000 Btu/h.
- XHX**52 series four way cassette with nominally rated capacities of 24,000 and 36,000 Btu/h.
- AHX**52 series one way discharge ceiling cassette indoor units with nominally rated capacities of 7,000, 9,000 and 12,000 Btu/h.
- FHX**62 series floor mounted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 Btu/h.
- FMHX**62 series floor mounted concealed with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 Btu/h.
- KHX**52 series wall mounted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 Btu/h.
- KHX**62 series wall mounted with nominally rated capacities of 18,000 and 19,000 Btu/h.
- THX**52 series ceiling suspended with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/h.
- VHX**62 series vertical air handler with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000, 48,000 and 60,000 Btu/h.

This interim waiver is issued on the condition that the statements, representations, and documents provided by the petitioner are valid. DOE may revoke or modify this interim waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In responses to two recent petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. *See* 72 FR 17528 and 72 FR 17533. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

DOE understands that existing testing facilities have limited ability to test multiple indoor units simultaneously. This limitation makes it impractical for manufacturers to test the large number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems. We further note that after DOE granted a waiver for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by AHRI—AHRI Standard 1230—2009: "Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment." This test procedure has not yet been incorporated into ASHRAE 90.1.

Therefore, as discussed below, as a condition for granting this interim waiver to Sanyo, DOE is including an alternate test procedure similar to those granted to Mitsubishi for its R22 and R410A products. DOE plans to consider the same alternate test procedure in the context of the subsequent decision and order pertaining to Sanyo's petition for waiver. This alternate test procedure will allow Sanyo to test and make energy efficiency representations for its ECO-i products. DOE has applied a similar alternate test procedure to other waivers for similar residential and commercial central air conditioners and heat pumps manufactured by Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); Daikin (74 FR 16373, April 10, 2009); Mitsubishi (74 FR 66315, December 15, 2009) and LG (74 FR 66330, December 15, 2009).

The alternate test procedure developed in conjunction with the Mitsubishi waiver permits Sanyo to

designate a "tested combination" for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight indoor units so that it can be tested in available test facilities. (The "tested combination" was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is increased in this instance from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.) The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below. The alternate test procedure also allows manufacturers of such products to make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

DOE plans to consider inclusion of the following waiver language in the decision and order for Sanyo's ECO-i commercial multi-split water-source heat pump models:

(1) The petition for waiver filed by Sanyo North America Corp. is hereby granted as set forth in the paragraphs below.

(2) Sanyo shall not be required to use existing test procedures to test or rate its ECO-i variable capacity multi-split heat pump products listed above in section III, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Sanyo shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Sanyo shall test a tested combination selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Sanyo shall make representations concerning the ECO-i products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term tested combination means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between two and five indoor units. (For systems with nominal cooling capacities greater than 150,000 Btu/h, as many as eight indoor units may be used, so as to be able to test non-ducted indoor unit combinations). For multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family or another indoor model family if the highest sales model family does not provide sufficient capacity (*see* ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, subpart B, appendix M.

(C) *Representations.* In making representations about the energy efficiency of its ECO-i variable capacity multi-split heat pump products for compliance, marketing, or other purposes, Sanyo must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(1) For ECO-i combinations tested in accordance with this alternate test procedure, Sanyo may make representations based on these test results.

(2) For ECO-i combinations that are not tested, Sanyo may make representations of non-tested combinations at the same energy efficiency level as the tested combination. The outdoor unit must be the one used in the tested combination. The representations must be based on the test results for the tested combination. The representations may also be determined by an Alternative Rating Method approved by DOE.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Sanyo petition for waiver from the test procedures applicable to Sanyo's ECO-i commercial multi-split heat pump products. For the reasons articulated above, DOE also grants Sanyo an interim waiver from those procedures. As part of this notice, DOE is publishing Sanyo's petition for waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Sanyo is required to follow as a condition of its interim waiver and that DOE is considering including in its subsequent decision and order. In this alternate test procedure, DOE is defining a tested combination that Sanyo could use in lieu of testing all retail combinations of its ECO-i multi-split heat pump products.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. Gary Nettinger, Vice President, Applied Products Group, Sanyo North America Corp., 1690 Roberts Blvd., NW, Suite 110, Kennesaw, GA 30144. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC on March 10, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

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January 4, 2010

Ms. Catherine Zoi

Assistant Secretary for Energy Efficiency and Renewable Energy

United States Department of Energy

1000 Independence Ave., SW

Washington, DC 20585–0121

Re: Petition for Waiver of Test Procedure and Application for Interim Waiver for ECO-i Air Source and Water Source Heat Pumps and Heat Recovery Products

Dear Assistant Secretary Zoi,

SANYO North America Corporation (SANYO) respectfully petitions the Department of Energy (DOE) pursuant to 10 C.F.R § 431.401(a) (1–1–09 Edition) for a waiver of the test procedure as defined in 10 C.F.R § 431.96 (1–1–09 Edition), ARI Standard 340/360–2004 and ISO Standard 13256–1 for SANYO's ECOi commercial Variable Refrigerant Flow (VRF) multi-split air and water source heat pump and heat recovery systems. This petition for waiver is requested for SANYO's ECOi VRF multi-split systems because the basic design of VRF multi split systems result in the inability to test or rate the performance of the system according to prescribed test procedures at this time. SANYO would also request that any future SANYO ECOi VRF multi-split products that may be developed also be provided waiver from test procedure until an accepted test procedure is identified by DOE.

DOE has previously granted a similar waiver to SANYO for our first generation ECOi air source heat pump and heat recovery products on April 9, 2009 (F.R. Vol. 74/No. 67/pages 16193–16197). SANYO's ECOi VRF multi-split equipment addressed in this petition results from the planned introduction of our second generation ECOi product line targeted for a phased introduction beginning in February 2010. This new second generation ECOi product line incorporates new technologies and other design changes that increase the overall system performance and expand the product line. This new second generation product does however maintain many of the same basic functions and features of our original ECOi product line which was addressed a previous petition (Case No. CAC–017, dated February 22, 2007).

SECTION 1—BACKGROUND

SANYO's ECO-i VRF Multi-split heat pumps and heat recovery products contains characteristics that prevent testing of the system using the procedures outlined in ARI 340/360–2004 or ISO 13256–1. The products identified in this request involve 90 unique outdoor models and 54 unique indoor models and the line continues to expand. These indoor and outdoor units may be connected in such a substantial possible number of configurations that more than one million unique systems may be created. ECOi VRF multi-split systems may involve up to 40 indoor units being connected to an outdoor system. Simply stated, testing laboratories cannot test products with so many indoor units connected to an outdoor system. There are too many possible combinations to be feasibly tested. And testing facilities are not designed to test multi split VRF systems with such large numbers of indoor and outdoor units.

As a result of the before mentioned test procedure problems, SANYO seeks a waiver from test procedures for these products and future ECOi VRF products until such time as a permanent or interim method of testing and rating VRF Multi-Split products is adopted.

SECTION 2—SANYO Petitions a Waiver from Test Procedure for the following Particular Basic Model Groups

ECOi Outdoor Unit Air Source Heat Pump Series (208/230 Volt, 3 Phase, 60 Hz):

- Models CHDX***63 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288
- Models CHDXR***63 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288

ECOi Outdoor Unit Air Source Heat Pump Series (460 Volt, 3 Phase, 60 Hz):

- Models CHDX***74 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288
- Models CHDXR***74 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288

ECOi Outdoor Unit Air Source Heat Recovery Series (208/230 Volt, 3 Phase, 60 Hz):

- Models CHDZ***63 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288
- Models CHDZR***63 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288

ECOi Outdoor Unit Air Source Heat Recovery Series (460 Volt, 3 Phase, 60 Hz):

- Models CHDZ***74 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288
- Models CHDZR***74 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288

ECOi Outdoor Unit Water Source Heat Recovery Series (208/230 Volt, 3 Phase, 60 Hz):

- Models CHWDZ***63 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288

ECOi Outdoor Unit Water Source Heat Recovery Series (460 Volt, 3 Phase, 60 Hz):

- Models CHWDZ***74 with capacities ranging from 72,000 to 288,000 BTU/Hr.
  - ***: 072, 096, 144, 168, 192, 216, 240, 264, 288

All outdoor units identified above are compatible for use with the below listed indoor units. SANYO ECOi indoor units operate on 208/230 volt single phase 60 hertz power supplies.

SANYO ECOi VRF Indoor Units:

- UMHX**62 series low profile concealed ducted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000 and 18,000 BTU/hr.
- UHX**62 series low-medium static concealed ducted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000, 24,000, 36,000, 48,000 and 54,000 BTU/hr.
- DHX**52 series medium-high static concealed ducted with nominally rated capacities of 36,000 and 48,000 BTU/hr.
- XMHX**52 series four way cassette with nominally rated capacities of 12,000 and 18,000 BTU/hr.
- XHX**52 series four way cassette with nominally rated capacities of 24,000 and 36,000 BTU/hr.
- AHX**52 series one way discharge ceiling cassette indoor units with nominally rated capacities of 7,000, 9,000 and 12,000 BTU/hr.
- FHX**62 series floor mounted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 BTU/hr.
- FMHX**62 series floor mounted concealed with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 BTU/hr.
- KHX**52 series wall mounted with nominally rated capacities of 7,000,

9,000, 12,000, 15,000, 18,000 and 24,000 BTU/hr.
- KHX**62 series wall mounted with nominally rated capacities of 18,000 and 19,000 BTU/hr.
- THX**52 series ceiling suspended with nominally rated capacities of 12,000, 18,000 and 24,000 BTU/hr.
- VHX**62 series vertical air handler with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000, 48,000 and 60,000 BTU/hr.

SECTION 3—DESIGN CHARACTERISTICS CONSTITUTING THE GROUNDS FOR PETITION

ECO-i VRF multi split products enable the connection of multiple indoor units to an outdoor unit or outdoor system comprised of one, two or even three interconnected outdoor units. SANYO designs and manufactures ECOi VRF multi-split systems outdoor units which utilize either air or water as the heat exchange media. All outdoor units are capable of part load operation by varying refrigerant flow through the use of inverter driven variable speed compressor technology. This results in the outdoor units operating capacity closely matching the actual indoor load. The ECO-i product line is designed to optimize overall system performance and efficiency when operating at part load. This significantly decreases overall energy usage.

Each indoor unit of the ECO-i system may have an individual remote controller that allows the occupant to adjust their temperature independently of the set temperature of other indoor units connected to the same outdoor unit. Some of the indoor units may be set to the "off" mode which increases energy sayings even further when heating or cooling is not required.

The variable speed compressor is capable of reducing operating capacity to a fraction of its full load capacity. This results in a significant energy savings when only a small amount of heating or cooling is required.

The VRF multi-split technology that is incorporated in the ECO-i system allows up to 130% of indoor unit rated capacity to be connected to the outdoor unit system. VRF technology allows this mis-match of indoor to outdoor capacity to again save energy and to utilize load shifting diversity while still meeting the HVAC requirements of the building.

ECO-i series "CHDZ Heat Recovery" VRF multi-split outdoor units go one step farther by allowing the consumer to operate both heating and cooling simultaneously. In the simultaneous mode, heat is actually being removed from the "cooling zones" and deposited in the "heating zones" via the system's heat recovery ability. Although there is no currently adopted DOE, AHRI or ASHRAE method to recognize the systems performance during simultaneous operation, it is certainly reasonable to believe that the overall system efficiency is dramatically increased. This increase in efficiency occurs because some indoor units within the building are acting as condensers while other indoor units are acting as evaporators at the same time. This means that heat is transferred within the building rather than being wasted to the outdoor environment.

Multi-split VRF technology will help our nation to reduce the amount of energy needed to heat and cool our buildings. SANYO is pleased to introduce this technology to not only improve the control that the end user has over their environment but also to help with our nation's desire to reduce overall energy usage.

The Department of Energy (DOE) has previously granted waivers and/or interim waivers to other manufacturers of similar VRF multi-split equipment that contain the same basic design characteristics as that of SANYO's ECO-i product line. Such waiver relief has been granted to:

➢ Mitsubishi	69 Fed. Reg., 52660	August 27, 2004.
➢ Samsung	70 Fed. Reg., 9629	February 28, 2005.
➢ Mitsubishi	71 Fed. Reg., 14858	March 24, 2006.
➢ Mitsubishi	72 Fed. Reg., 17528	April 9, 2007.
➢ Samsung	72 Fed. Reg., 71387	December 17, 2007.
➢ Fujitsu	72 Fed. Reg., 71383	December 17, 2007.
➢ SANYO	73 Fed. Reg., 179	January 7, 2008.
➢ Daikin	73 Fed. Reg., 1207, 1213	January 7, 2008.
➢ Daikin	73 Fed. Reg., 39,680	July 10, 2008.
➢ SANYO	74 Fed. Reg., No. 67	April 9, 2009.

SECTION 4—SPECIFIC REQUIREMENTS SOUGHT TO BE WAIVED

SANYO petitions waiver from the test conditions and procedures of ARI Standard 340/360–2004 identified by Table 1 to § 431.96 and to section 431.96 of 10 C.F.R 431 (1–1–09 Edition) for our ECOi VRF multi-split air cooled heat pump and heat recovery systems with nominal capacity ranging from 72,000 to 288,000 BTU/hr.

SANYO also petitions waiver from the test conditions and procedures of ISO Standard 13256–1 (1998) identified in Table 1 to § 431.96 and to section 431.96 of 10 C.F.R 431 (1–1–09 Edition) for our ECOi VRF multi-split water source heat pump and heat recovery systems with nominal capacity ranging from 72,000 to 288,000 BTU/hr.

SECTION 5—IDENTITY OF MANUFACTURERS OF SIMILAR BASIC MODELS

To the best of our knowledge the following manufacturers either currently market similar VRF products within the United States:
- Daikin AC (Americas), Inc.
- Fujitsu General America, Inc.
- LG Electronics U.S.A., Inc.
- Mitsubishi Electric & Electronics USA, Inc.

SECTION 6—ALTERNATE TESTING PROCEDURES

SANYO requests that DOE apply the same Alternative Test Procedure to cover the ECOi systems defined in Section 2 above as DOE previously applied to SANYO's first generation ECOi VRF multi-split products as defined in Federal Register/Vol. 74, No. 67/Thursday, April 9, 2009/Notices, pages 16195 and 16196.

SECTION 7—APPLICATION FOR INTERIM WAIVER

In accordance with 10 CFR 431.401(a)(2) SANYO takes this opportunity to also submit an Application for Interim Waiver of test procedures for our ECO-i VRF multi-split models listed in Section 2 of this document. SANYO believes that it is likely that our Petition for Waiver will be granted based upon but not limited to the following supportive facts:
- The approvals of similar Petitions for Waiver and/or Applications for Interim Waivers requests have previously been granted by DOE for Mitsubishi Electric & Electronics

USA, Daikin AC (Americas), Samsung, Fujitsu General America, Inc. and SANYO. Details of these approvals are provided in Section 3 of this document.

- Through the approval of previous Petitions for Waiver and Applications for Interim Waiver it has been demonstrated that testing standards such as ARI 340–360 and ISO 13256–1 do not adequately define uniform methods to test and rate the performance the VRF multi-split products.
- Failure to approve our Petition for Waiver and Application for Interim Waiver will not only result in significant economic hardship but SANYO will also suffer a serious competitive disadvantage as other manufacturers of similar product continue to be able to market their VRF multi-split products and gain market share while SANYO could not.
- A significant portion of SANYO's overall projected sales revenues are dependent upon the timely introduction of this product line. Our intention is to begin introducing these new ECOi products in February 2010.
- The approval of this waiver and interim waiver is in the best interest of our public and government initiatives to reduce national energy usage.

It is therefore reasonable for one to believe that SANYO's petition will also be granted.

SECTION 8—CONFIDENTIAL INFORMATION

SANYO makes no request to DOE related to this Petition for Waiver from Test Procedure or Application for Interim Waiver containing confidential information.

SECTION 9—CONCLUSION

It is clear that without the approval of this Petition for Waiver and Application for Interim Waiver that SANYO will loose our ability to effectively compete in the United States VRF market. This is a market in which our company has proven success with HVAC products for more than 25 years and even longer in many other countries throughout the world. SANYO is pleased to have an opportunity to bring this leading edge technology to the United States market, to not only improve the comfort of Americans but also to also reduce the amount of energy consumed on building cooling and heating.

SANYO respectfully requests the Department of Energy grant our Application for Interim Waiver and our Petition for Waiver from Test Procedure to enable the introduction of our second generation advanced ECO-i products to the U.S. market. Granting these requested waivers will permit us to effectively compete in the marketplace.

Due to our near term introduction of our ECO-i product offering we would greatly appreciate a timely response to this Petition for Waiver from Test Procedure and Application for Interim Waiver.

As stated in the introduction of this request SANYO would also request that any future SANYO ECOi products that may be developed also be provided waiver from test procedure until an accepted test procedure is identified by DOE.

Should you or any parties have questions related to this Petition for Waiver from Test Procedure and Application for Interim Waiver, please contact Gary Nettinger at 678–810–0261 or by email at *gnettinger@sna.sanyo.com.*

Sincerely,

Gary Nettinger

Vice President; Applied Products Group

SANYO North America, Corp.

1690 Roberts Blvd., NW

Suite 110

Kennesaw, GA 30144

cc:

Daikin AC (Americas), Inc.

1645 Wallace Drive, Suite 110

Carrollton, TX 75006

Attn: Akinori Atarashi, President

Fujitsu General America, Inc.

353 Route 46 West

Fairfield, NJ 07004

Attn: Arturo Thur De Koos, Engineering & Technical Support

LG Electronics USA, Inc.

1750 K Street NW

Washington, DC 20006

Attn: John I. Taylor, Vice President, Public Affairs and Communications

Mitsubishi Electric & Electronics USA, Inc.

4300 Lawrenceville-Suwanee Road

Suwanee, GA 30024

Attn: William Rau, Senior Vice President and General Manager

[FR Doc. 2010–5934 Filed 3–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–011]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF–011)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–011) that grants to Samsung Electronics America, Inc. (Samsung) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedure for certain basic models containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's decision and order, Samsung shall be required to test and rate its refrigerator-freezers with adaptive control anti-sweat heaters according to an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective March 18, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611, E-mail: *AS_Waiver_Requests@ee.doe.gov.* Betsy Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7796; *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Samsung a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures at 10 CFR part 430 subpart B, appendix A1 for certain basic models of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters, provided that Samsung tests and rates such products using the alternate test procedure described in this notice. Today's

decision prohibits Samsung from making representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and such representation fairly discloses the results of such testing. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Issued in Washington, DC, on March 10, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Samsung Electronics America, Inc. (Case No. RF–011).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Today's notice involves residential products under Part A. The test procedure for residential electric refrigerator-freezers relevant to the current petition for waiver is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, when (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On September 9, 2009, Samsung filed a petition for waiver from the test procedures applicable to its product line of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters. The applicable test procedures are contained in 10 CFR part 430, subpart B, appendix A1—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers. Because the existing test procedure under 10 CFR part 430 takes neither ambient humidity nor adaptive technology into account, it does not accurately measure the energy consumption of Samsung's new refrigerator-freezers that feature humidity sensors and adaptive control anti-sweat heaters. Consequently, Samsung has submitted an alternate test to DOE for approval to ensure that it is correctly calculating the energy consumption of this new product line. On December 15, 2009, DOE granted Samsung an interim waiver and published Samsung's petition for waiver. 74 FR 66340. DOE did not receive any comments on the Samsung petition.

Assertions and Determinations

Samsung's Petition for Waiver

In its petition, Samsung requested that it be permitted to use the same alternate test procedure DOE prescribed for GE and Whirlpool refrigerators and refrigerator-freezers that are equipped with a similar technology. The alternate test procedure applicable to the GE and Whirlpool products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the GE decision and order referenced above. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Samsung petition for waiver. The FTC staff did not have any objections to granting a waiver to Samsung.

Conclusion

After careful consideration of all the material that was submitted by Samsung and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by Samsung Electronics America, Inc., on September 9, 2009 (Case No. RF–011), is hereby granted as set forth in the paragraphs below.

(2) Samsung shall not be required to test or rate the following Samsung models on the basis of the current test procedures contained in 10 CFR part 430, subpart B, appendix A1, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

RB19*AC**
RB21*AC**
RF19*AC**
RF21*AC**
RF26*AF**
RFG23*AC**
RFG29*AC**
RFM28*AA**

(3) Samsung shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the Samsung products listed in paragraph (2) only:

(A) The following definition is added at the end of Section 1:

1.13 Variable anti-sweat heater control means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3 except that the vertical ambient temperature

gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be off during one test and on during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the result of the second test will be derived from the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the "on" position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{ON} = E + (Correction Factor)

where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the off position.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1,000 W)

Where:

Anti-sweat Heater Power = A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F. System-loss Factor = 1.3.

(4) Representations. Samsung may make representations about the energy use of its adaptive control anti-sweat heater refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 10, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–5935 Filed 3–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–004]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to the General Electric Company From the Department of Energy Residential Clothes Dryer Test Procedure (Case No. CD–004)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CD–004) that grants to the General Electric Co. (GE) a waiver from the DOE clothes dryer test procedure. The waiver request pertains to GE's specified models of condensing residential clothes dryer. The existing test procedure does not apply to condensing clothes dryers. Under today's decision and order, GE shall be not be required to test and rate its specified models of condensing residential clothes dryer.

DATES: This decision and order is effective March 18, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611; E-mail: *AS_Waiver_Requests@ee.doe.gov.* Betsy Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7796; *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants GE a waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix D, for its two models of condensing clothes dryer.

Issued in Washington, DC, on March 10, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: GE Corporation. (Case No. CD–004)

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Today's notice involves residential products under Part A. The test procedure for residential clothes dryers relevant to the current petition for waiver is contained in 10 CFR part 430, subpart B, appendix D.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption

characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for an interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On July 14, 2009, GE filed a petition for waiver from the test procedures applicable to its DCVH480E* and DCVH485E* product models (the two models differ only in color) of condensing clothes dryer. On March 2, 2010, GE informed DOE that it had made a typographical error in the model numbers listed in its petition for waiver. The correct model numbers of the products for which GE seeks a waiver, and that DOE analyzed in determining whether to grant the interim waiver and this petition for waiver, are DCCH480E* and DCCH485E*. The applicable test procedures are contained in 10 CFR part 430, subpart B, appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers. GE seeks a waiver from the applicable test procedures for its DCCH480E* and DCCH485E* basic product models because, GE asserts, design characteristics of this model prevent testing according to the currently prescribed test procedures. DOE previously granted Miele Appliance, Inc. (Miele), a waiver from test procedures for two similar condenser clothes dryer models (T1565CA and T1570C). (60 FR 9330 (Feb. 17, 1995)) GE claims that its condenser clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to Miele in 1995 be granted for GE's DCCH480E* and DCCH485E* models.

In support of its petition, GE claims that the current clothes dryer test procedures apply only to vented clothes dryers because the test procedures require the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. GE plans to market a condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums, neither of whose construction permits the use of external venting.

Assertions and Determinations

GE's Petition for Waiver

On July 14, 2009, GE filed a petition for waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D for particular models of condensing clothes dryer. On December 15, 2009, DOE published GE's petition for waiver and granted GE an interim waiver from the current test procedure. 74 FR 66335. DOE did not receive any comments on the GE petition.

DOE previously granted Miele a waiver from test procedures for condensing clothes dryers after determining that the clothes dryer test procedure was not applicable to the company's condenser clothes dryers because of the lack of an exhaust port for mounting the required exhaust restrictor, which is an element of the test procedure. 60 FR 9332 (February 17, 1995). Subsequently, in 2008, DOE granted LG a similar waiver for its DLEC733W condenser clothes dryer. 73 FR 66641 (Nov. 10, 2008). In 2009, DOE granted a similar waiver to Whirlpool. 74 FR 66334 (December 15, 2009).

Therefore, for the reasons discussed above and in light of the long-standing waiver granted to Miele, and the recent waivers to LG and Whirlpool, DOE grants GE's petition for waiver from testing of its condenser clothes dryers.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the GE petition for waiver. The FTC staff did not have any objections to granting a waiver to GE.

Conclusion

After careful consideration of all the material that was submitted by GE and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the General Electric Co. (Case No. CD–004) is hereby granted as set forth in the paragraphs below.

(2) GE shall not be required to test or rate its DCCH480E* and DCCH485E* condensing clothes dryer models on the basis of the test procedures at 10 CFR part 430, subpart B, appendix D.

(3) This waiver shall remain in effect from the date this decision and order consistent with the provisions of 10 CFR 430.27(m).

(4) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect.

Issued in Washington, DC, on March 10, 2010.

Cathy Zoi

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–5937 Filed 3–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the U.S. Department of Energy (DOE) is forecasting the representative average unit costs of five residential energy sources for the year 2010 pursuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

DATES: The representative average unit costs of energy contained in this notice will become effective April 19, 2010 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy Forrestal Building, Mail Station EE–2J 1000 Independence Avenue, SW.,

Washington, DC 20585–0121, (202) 586–7892, *Mohammed.Khan@ee.doe.gov*

Francine Pinto, Esq. U.S. Department of Energy, Office of General Counsel Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432, *Francine.pinto@hq.doe.gov*

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act) requires that DOE prescribe test procedures for the measurement of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293(b)(3)) These test procedures are found in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B.

Section 323(b)(3) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)(3)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at *http://www.ftc.gov/appliances.*

DOE last published representative average unit costs of residential energy in a **Federal Register** notice entitled, "Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy", dated June 3, 2009, 74 FR 26675. Effective April 19, 2010, the cost figures published on June 3, 2009, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 2010 representative average unit after-tax costs found in this notice. The representative average unit after-tax costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the January, 2010, EIA *Short-Term Energy Outlook.* (EIA releases the *Outlook* monthly.) The representative average unit after-tax cost for kerosene is derived from its price relative to that of heating oil, based on the 2004–2008 averages for these two fuels. The source for these price data is the December 2009, *Monthly Energy Review* DOE/EIA–0035(2010/01). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available on the EIA Web site at *http://www.eia.doe.gov*. For more information on the two sources, contact the National Energy Information Center, Forrestal Building, EI–30, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800, e-mail: *infoctr@eia.doe.gov*.

The 2010 representative average unit costs under section 323(b)(4) of the Act are set forth in Table 1, and will become effective April 19, 2010. They will remain in effect until further notice.

Issued in Washington, DC, on March 10, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[2010]

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$33.70	11.50¢/kWh [2 3]	$.1150/kWh
Natural Gas	11.94	$1.194/therm [4] or $12.29/MCF [5 6]	.00001194/Btu
No. 2 Heating Oil	20.76	$2.88/gallon [7]	.00002076/Btu
Propane	24.31	$2.22/gallon [8]	.00002431/Btu
Kerosene	23.03	$3.11/gallon [9]	.00002303/Btu

Sources: U.S. Energy Information Administration, *Short-Term Energy Outlook* (January 2010) and *Monthly Energy Review* (December 2009)
1. Btu stands for British thermal units.
2. kWh stands for kilowatt hour.
3. 1 kWh = 3,412 Btu.
4. 1 therm = 100,000 Btu. Natural gas prices include taxes.
5. MCF stands for 1,000 cubic feet.
6. For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,029 Btu.
7. For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
8. For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
9. For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 2010–5936 Filed 3–17–10; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9128–2]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board; Environmental Engineering Committee Augmented for the Evaluation and Comment on EPA's Proposed Research Approach for Studying the Potential Relationships Between Hydraulic Fracturing and Drinking Water Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the SAB Environmental Engineering Committee (EEC). The SAB EEC, augmented with other SAB members, will evaluate and comment on EPA's proposed approach to study the potential public health and environmental protection issues that may be associated with hydraulic fracturing.

DATES: The meeting will be held on April 7, 2010 from 8:30 a.m. to 5 p.m., and April 8, 2010 from 8 a.m. to 12 noon (Eastern Daylight Time).

ADDRESSES: The Committee meeting will be held at the St. Regis Hotel located at 923 16th Street Northwest, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain additional information regarding this meeting may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 343–9946; fax (202) 233–0643; or via e-mail at *hanlon.edward@epa.gov*. General information about the EPA SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at *http://www.epa.gov/sab*. Any inquiry regarding EPA's planned research approach to study the potential public health and environmental protection issues that may be associated with hydraulic fracturing should be directed to Teri Richardson, EPA Office of Research and Development (ORD), at *richardson.teri@epa.gov* or (513) 569–7949.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the SAB EEC augmented with other SAB members will hold a public meeting to evaluate and comment on EPA's proposed approach to study the potential public health and environmental protection issues that may be associated with hydraulic fracturing performed for extraction of natural gas from geologic formations. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

In its Fiscal Year 2010 Appropriation Conference Committee Directive to EPA, the U.S. House of Representatives approved a provision that urges EPA to conduct analyses to assess the potential risks to drinking water posed by hydraulic fracturing of formations including coalbeds and shale for extraction of natural gas. Hydraulic fracturing (or hydrofracking) generates vertical and horizontal fractures in underground geologic formations to facilitate extraction of gas (or oil) from the subsurface. While each formation has unique characteristics and features, the general process involves drilling a vertical well, extending the well bore horizontally into the formation, removing water, injecting hydrofracking fluids and then extracting the natural gas along with separation and management of fluids. To meet the Congressional request, EPA's ORD has initiated a draft approach to gather existing data and information including a stakeholder input process; to catalog potential risks to drinking water supplies from hydraulic fracturing; to identify data gaps; and to develop research questions, research needs, and research products.

ORD is seeking evaluation and comment from the SAB regarding EPA's proposed approach. Accordingly, the SAB EEC augmented with other SAB members will hold a public meeting to evaluate and comment on ORD's planned research approach to study the potential public health and environmental protection issues that may be associated with hydraulic fracturing.

Availability of Meeting Materials: The agenda and EPA's ORD proposed research approach will be available on the SAB Web site at *http://www.epa.gov/sab* in advance of the meeting.

Interested members of the public may submit relevant written or oral information on the topic of this advisory activity for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Edward Hanlon, DFO, in writing (preferably via e-mail), at the contact information noted above, by March 29, 2010 to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by March 29, 2010 so that the information may be made available to the SAB EEC augmented with other SAB members for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Edward Hanlon at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 11, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–5956 Filed 3–17–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0229; FRL–8816–8]

Pet Spot-On Analysis and Mitigation Plan Available for Public Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The U.S. Environmental Protection Agency is announcing the availability of its analysis of the data collected as a result of the Agency's awareness of increasing numbers of incidents associated with registered pet spot-on products to control fleas and ticks and a mitigation plan. The analysis consists of a Technical Review Document and Data Evaluation Records for pet spot-on products. The Agency is requesting comment on the necessary mitigation, including how best to effectively implement these measures.

DATES: Comments must be received on or before May 17, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0229 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.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0229. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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, is not placed on the Internet and will be publicly available only in hard copy form. 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 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.

FOR FURTHER INFORMATION CONTACT: Kimberly Nesci, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8059; fax number: (703) 308–0029; e-mail address: *nesci.kimberly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you use pet spot-on products or are a registrant of pet spot-on products. Potentially affected entities may include, but are not limited to:

• Chemical Manufacturers (NAICS code 32532), e.g., pet pesticide manufacturers.

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. What Should I Consider as I Prepare My Comments for EPA?

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

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

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

List of Subjects

Environmental protection, animal health, pesticides, pet spot-on products, pets.

Dated: March 11, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–5957 Filed 3–17–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–OPPT–2010–0155; FRL–9128–4]

Lead-Based Paint Renovation, Repair and Painting Activities in Target Housing and Child Occupied Facilities; State of Iowa. Notice of Self-Certification Program Authorization, Request for Public Comment, Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; program authorization, request for comments and opportunity for public hearing.

SUMMARY: This notice announces that on January 19, 2010, the State of Iowa was deemed authorized under section 404(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2684(a), and 40 CFR 745.324(d)(2), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, 15 U.S.C. 2682(c)(3). This notice also announces that EPA is seeking comment during a 45-day public comment period, and is providing an opportunity to request a public hearing within the first 15 days of this comment period, on whether Iowa's program is at least as protective as the Federal program and provides for adequate enforcement. This notice also announces that the authorization of the Iowa 402(c)(3) program, which was deemed authorized by regulation and statute on January 19, 2010, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves the Iowa program application on or before July 19, 2010.

DATES: Comments, identified by docket control number EPA–R07–OPPT–2010–0155, must be received on or before May 3, 2010. In addition, a public hearing request must be submitted on or before April 2, 2010.

ADDRESSES: Comments, and requests for a public hearing, may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Section I of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number EPA–R07–OPPT–2010–0155 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Crystal McIntyre, Technical Contact, Toxics and Pesticides Branch, Water, Wetlands, and Pesticides Division, Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, KS 66101, telephone number: (913) 551–7261; e-mail address: *mcintyre.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, to entities offering Lead Safe Renovation courses, and to firms and individuals engaged in renovation and remodeling activities of pre-1978 housing in the State of Iowa. Individuals and firms falling under the North American Industrial Classification System (NAICS) codes 231118, 238210, 238220, 238320, 531120, 531210, 53131, *e.g.,* General Building Contractors/ Operative Builders, Renovation Firms, Individual Contractors, and Special Trade Contractors like Carpenters, Painters, Drywall workers and Plumbers, "Home Improvement" Contractors, as well as Property Management Firms and some Landlords are also affected by these rules. 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 notice could also be affected. The 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically:* EPA has established an official record for this action under docket control number EPA–R07–OPPT–2010–0155. This docket may be accessed through *http://www.regulations.gov.* The official record consists of the documents specifically referenced in this action, this notice, the State of Iowa 402(c)(3) program authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI).

2. *In person:* You may read this document, and certain other related documents, by visiting Iowa Department of Public Health, 321 E. 12th Street, Des Moines, IA 50319–0075; contact person, Rita Gergely, telephone number (515) 242–6340. You may also read this document, and certain other related documents, by visiting the Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, KS 66101. You should arrange your visit to the EPA office by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number EPA–R07–OPPT–2010–0155 in the subject line on the first page of your response.

1. *By mail or in person or by courier:* Submit or deliver your comments and public hearing requests to: Crystal McIntyre, Technical Contact, Toxics and Pesticides Branch, Water, Wetlands, and Pesticides Division, Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, KS 66101. The Regional office is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

2. *Electronically:* You may submit your comments and public hearing requests electronically by e-mail to: *mcintyre.crystal@epa.gov* or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in Microsoft Word or ASCII file format.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark on each page the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM that you mail to EPA as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action Is the Agency Taking?

EPA is announcing that on January 19, 2010, the State of Iowa was deemed authorized under section 404(a) of TSCA, and 40 CFR 745.324(d)(2), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA. This notice also announces that EPA is seeking comment and providing an opportunity to request a public hearing on whether the State program is at least as protective as the Federal program and provides for adequate enforcement. The 402(c)(3) program ensures that training providers are accredited to teach renovation classes, that individuals performing renovation activities are properly trained and certified as renovators, that firms are certified as renovation firms, and that specific work practices are followed during renovation activities. On January 19, 2010, Iowa submitted an application under section 404 of TSCA requesting authorization to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and submitted a self-certification that this program is at least as protective as the Federal program and provides for adequate enforcement. Therefore, pursuant to section 404(a) of TSCA, and 40 CFR 745.324(d)(2), the Iowa renovation program is deemed authorized as of the date of submission and until such time as the Agency disapproves the program application or withdraws program authorization. Pursuant to section 404(b) of TSCA and 40 CFR 745.324(e)(2), EPA is providing notice, opportunity for public comment and opportunity for a public hearing on whether the State program application is at least as protective as the Federal program and provides for adequate enforcement. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time and place of the hearing. The authorization of the Iowa 402(c)(3) program, which was deemed authorized by regulation and statute on January 19, 2010, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves the program application on or before July 19, 2010.

B. What Is the Agency's Authority for Taking This Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled Lead Exposure Reduction. In the **Federal Register** dated April 22, 2008 (73 FR 21692), EPA promulgated final TSCA section 402(c)(3) regulations governing renovation activities. The regulations require that in order to do renovation activities for compensation, renovators must first be properly trained and certified, must be associated with a certified renovation firm, and must follow specific work practice standards, including recordkeeping requirements. In addition, the rule prescribes requirements for the training and certification of dust sampling technicians. EPA believes that regulation of renovation activities will help to reduce the exposures that cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead.

Under section 404 of TSCA, a state may seek authorization from EPA to administer and enforce its own renovation, repair and painting program in lieu of the Federal program. The regulation governing the authorization of a state program under section 402 of TSCA is codified at 40 CFR part 745, subpart Q. States that choose to apply for program authorization must submit a complete application to the appropriate regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a state must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, as required by section 404(b) of TSCA. EPA's regulations at 40 CFR part 745, subpart Q provide the detailed requirements a state program must meet in order to obtain EPA approval. A state may choose to certify that its own renovation, repair and painting program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program is at least as protective of human health and the environment as the Federal program and provides for adequate enforcement. Upon submission of such a certification letter the program is deemed authorized pursuant to TSCA section 404(a) and 40 CFR 745.324(d)(2). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following program summary is from Iowa's self-certification application:

Program Summary, State of Iowa, Renovation, Repair, and Painting Program/Lead-Safe Renovator Certification Program.

The state of Iowa is submitting an application to the U.S. Environmental Protection Agency (EPA) certifying that the state's Renovation, Repair, and Painting Program/Lead-Safe Renovator Program is as protective as the EPA program and is authorized when the application is submitted to EPA. The Iowa Department of Public Health (IDPH) is the lead agency for these programs. IDPH currently has EPA-authorized programs for lead-based paint activities training and certification and pre-renovation notification.

The rules for the Renovation, Repair, and Painting Program/Lead-Safe Renovator Program are found in 641—Chapter 70 of the *Iowa Administrative Code.* The amendments to this chapter that contain these requirements are effective on January 13, 2010. These rules already cover all lead-based paint activities that are conducted in target housing and child-occupied facilities:

1. Establish the discipline of lead-safe renovator.

2. Establish work practice requirements for renovation.

3 Require persons and firms that conduct these activities to be certified by April 22, 2010. To be certified, persons must complete an approved training program, apply for certification, and pay a fee of $60 per year. Firms must employ at least one certified lead-safe renovator and must apply for certification.

4. Establish procedures for the suspension, revocation, or modification of certifications.

5. Establish requirements for the approval of lead-safe renovator training programs and procedures for the suspension, revocation, or modification of training program approvals.

6. Define violations of these rules, establish procedures to assess penalties for violations of these rules, and establish administrative procedures for

persons or firms to appeal these penalties.

The legal authority for the renovation, repair, and painting program/lead-safe renovator certification is found in Code of Iowa 135.105A.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved state program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized state program.

V. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw authorization of a State or Indian Tribal renovation, repair and painting program, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

List of Subjects

Environmental protection, Hazardous substances, Lead, Renovation, Renovation work practice standards, Renovation training, Renovation certification, Renovation notification, Reporting and recordkeeping requirements, State of Iowa.

Dated: March 9, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2010–5967 Filed 3–17–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Circle Bancorp, Novato, California, Shoreline Capital Partners, LP, and Cole Financial Ventures, Inc., both of Mill Valley, California, to become bank holding companies by acquiring 100 percent of Circle Bank upon conversion of the bank from an industrial bank to a commercial bank.

Board of Governors of the Federal Reserve System, March 15, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–5933 Filed 3–17–10; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket 2010–0002; Sequence 8]

General Services Administration Acquisition Regulation; Submission for OMB Review; Sales Practice Format—Supplies and/or Services With an Established Catalog Price and Sales Practices Format—Supplies and/or Services With Market Pricing Without an Established Catalog Price

AGENCY: Office of the Chief Acquisition Officer, GSA.

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Sales Practice Format—Supplies and/or Services with an Established Catalog Price and Sales Practices Format—Supplies and/or Services with Market Pricing without an Established Catalog Price. A request for public comments was published in the **Federal Register** at 74 FR 4596, January 26, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 19, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–1900 or via e-mail at *warren.blankenship@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–00XX, Sales Practice Format—Supplies and/or Services with an Established Catalog Price and Sales Practices Format—Supplies and/or Services with Market Pricing without an Established Catalog Price, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

552.238–60—Sales Practices Format—Supplies and/or Services with an Established Catalog Price (SPF–1) and 552.238–61—Sales Practices Format—Supplies and/or Services with Market pricing without an Established Catalog Price (SPF–2). Submission of a Federal Supply Schedule offer or a specific type of modification of an FSS contract requires an Offeror to provide data regarding commercial sales practices (*e.g.,* catalog prices, quantity/volume discounts, concessions, etc). Prospective FSS Offerors and/or current contractors are required to provide information as

outlined in Program solicitations to assist the Contracting Officer in evaluation of the offer as well as formulating negotiation objectives.

B. Annual Reporting Burden

Number of Respondents: 18,000.
Responses per Respondent: 3.5.
Annual Responses: 63,000.
Average Burden per Response: 5.
Total Burden Hours: 315,000.

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, Sales Practice Format—Supplies and/or Services with an Established Catalog Price and Sales Practices Format—Supplies and/or Services with Market Pricing without an Established Catalog Price, in all correspondence.

Dated: March 5, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–5928 Filed 3–17–10; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket 2010–0002; Sequence 9]

General Services Administration Acquisition Regulation; Submission for OMB Review; Submission and Distribution of Authorized FSS Schedule Price Lists, Contract Price Lists, and Dissemination of Information by Contractor

AGENCY: Office of the Chief Acquisition Officer, GSA.

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Submission and Distribution of Authorized FSS Schedule Price Lists, Contract Price Lists, and Dissemination of Information by Contractor. A request for public comments was published in the **Federal Register** at 74 FR 4596, January 26, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 19, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–1900 or via e-mail at *warren.blankenship@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–00XX, Submission and Distribution of Authorized FSS Schedule Price Lists, Contract Price Lists, and Dissemination of Information by Contractor, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clauses 552.238–13—Contract Price Lists, 552.238–65—Submission and Distribution of Authorized FSS Schedule Price Lists, and 552.238–81—Dissemination of Information by Contractor are required because FSS Contractors are responsible for printing and distributing their Authorized FSS Schedule Price List after award and/or after a specific modification(s) as well as disseminating the price lists to all of its authorized sales outlets.

B. Annual Reporting Burden

Number of Respondents: 18,000.
Responses per Respondent: 3.5.
Annual Responses: 63,000.
Average Burden per Response: 5.
Total Burden Hours: 315,000.

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, Submission and Distribution of Authorized FSS Schedule Price Lists, Contract Price Lists, and Dissemination of Information by Contractor, in all correspondence.

Dated: March 5, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–5930 Filed 3–17–10; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket 2010–0002; Sequence 7]

General Services Administration Acquisition Regulation; Submission for OMB Review; Submission Instructions (Federal Supply Schedules) and Evaluation Factors for Award

AGENCY: Office of the Chief Acquisition Officer, GSA.

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Submission Instructions (Federal Supply Schedules) and Evaluation Factors for Award. A request for public comments was published in the **Federal Register** at 74 FR 4596, January 26, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 19, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement

Analyst, Contract Policy Branch, at telephone (202) 501–1900 or via e-mail at *warren.blankenship@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–00XX, Submission Instructions (Federal Supply Schedules) and Evaluation Factors for Award, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information collection requirement for GSAR clauses 552.238–10—Submission Instructions (Federal Supply Schedules) and 552.238–11—Evaluation Factors for Award is needed to require prospective Offerors to provide current, accurate and complete information to demonstrate a thorough understanding of the scope of the solicitation and meet the government's requirements. This information includes training certificates, past performance data, and a list of other FSS contracts.

B. Annual Reporting Burden

Number of Respondents: 4,000.
Responses per Respondent: 1.
Annual Responses: 4,000.
Average Burden per Response: 8.
Total Burden Hours: 32,000.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, Submission Instructions (Federal Supply Schedules) and Evaluation Factors for Award, in all correspondence.

Dated: March 5, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–5923 Filed 3–17–10; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket 2010–0002; Sequence 10]

General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Advantage!® and Electronic Commerce-FACNET

AGENCY: Office of the Chief Acquisition Officer, GSA.

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding GSA Advantage!® and Electronic Commerce-FACNET. A request for public comments was published in the **Federal Register** at 74 FR 4596, January 26, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 19, 2010.

FOR FURTHER INFORMATION CONTACT: Warren Blankenship, Procurement Analyst, Contract Policy Division, at telephone (202) 501–1900 or via e-mail at *warren.blankenship@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–00XX, GSA Advantage!® and Electronic Commerce-FACNET, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Supply Schedules (FSS) contractors must participate in the *GSA Advantage!*® system at 552.238–55. It is an online shopping service which, via the Electronic Commerce clause at 552.238–56, receives catalogs, invoices and text messages as well as sends purchase orders, application advice, and functional acknowledgements.

B. Annual Reporting Burden

Number of Respondents: 16,634.
Responses per Respondent: 3.5.
Annual Responses: 58,219.
Average Burden per Response: 2.
Total Burden Hours: 116,438.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, GSA Advantage!® and Electronic Commerce-FACNET, in all correspondence.

Dated: March 5, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–5931 Filed 3–17–10; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Sale of Plum Island, NY

AGENCY: Office of Real Property Utilization & Disposal; General Services Administration.

ACTION: Notice.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by the U.S. General Services Administration (GSA) Order PBS P 1095.4C, GSA, as the operational Joint Lead Agency, announces its Notice of Intent (NOI) to prepare an EIS for the anticipated sale of Plum Island, New York and an ancillary support facility at Orient Point, New York. The US Department of Homeland Security (DHS) will act as a Joint Lead Agency in ongoing consultation with GSA for the NEPA and associated regulatory compliance activities.

ADDRESSES: Written comments may be sent to: Mr. Phil Youngberg, Environmental Manager c/o Mr. John Dugan, General Services Administration (GSA), 10 Causeway Street, Room 925, Boston, MA 02222. All comments received by GSA in response to the Plum Island NEPA process, including commenter's name and state of

residence, will be public information and may be released by GSA.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Youngberg via FAX at 617–565–5720 or e-mail: *phil.youngberg@gsa.gov*.

SUPPLEMENTARY INFORMATION:

Background: Plum Island is an 840-acre island located approximately 1.5 miles off the northeast tip of Orient Point, Long Island, New York. DHS, in cooperation with the U.S. Department of Agriculture (USDA), operates the Plum Island Animal Disease Center (PIADC) on the island. Plum Island is formerly the home of the U.S. Army's Fort Terry and was transferred to the USDA in 1954 to establish a research facility for foot-and-mouth disease. In 2003, Plum Island was transferred to DHS. PIADC is comprised of buildings, industrial facilities and equipment, roadways, utilities, specialized facilities, easements, and rights of way. Additional assets on Plum Island include natural undeveloped land, the Plum Island Lighthouse constructed in 1869, and buildings and structures associated with the former Fort Terry. DHS also owns and operates transportation assets and a 9.5-acre facility to support PIADC at Orient Point, New York which includes buildings, utilities, and ferry docking facilities.

Statutory Authority: The purpose of this EIS is to examine the effects associated with the anticipated sale of Plum Island, New York and its support facility at Orient Point, New York including all real and related personal property and transportation assets (the "Property"). The need for this proposed action is mandated in Section 540 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009; United States Public Law 110–329 (the "Act"), which directs the Secretary of the DHS to liquidate the Plum Island asset by directing the Administrator of the General Services to sell through public sale all real and related personal property and transportation assets which support Plum Island operations, subject to such terms and conditions as necessary to protect government interests and meet program requirements. The Act mandates the sale as a result of the determination by DHS to construct and operate a new National Bio and Agro-Defense Facility (NBAF) in Manhattan, Kansas and move its operations from the PIADC to the NBAF (Record of Decision dated 01/16/2009)

Scoping and Request for Comments: The EIS will address the potential impacts to the environment of two alternatives: sale of the Property (the "Action Alternative"), and continued Federal ownership (the "No-Action Alternative"). The Action Alternative will be further refined into a series of reasonably foreseeable land use options. Because the federal government has no authority to regulate future land uses, a precise statement of the specific land use-related environmental and socioeconomic effects that could result from reuse would be largely speculative. In response to the lack of certainty concerning future reuse of the Property, the EIS will identify reasonable land use options that could result upon the sale of the Property. When the Property leaves federal ownership, proposed uses would be subject to local and state environmental and land use regulation.

The primary purpose of the scoping process is for the public to assist the GSA and DHS in developing the EIS by identifying important issues and alternatives related to the sale of the Property. Scoping meetings in Southold, New York and Old Saybrook, Connecticut will allocate time for presentations by the GSA and DHS, followed by an opportunity for the public to comment. Land use and development scenarios will be developed with input from the local community through the scoping process. It is anticipated that these public scoping meetings will be held in the spring of 2010. GSA will provide public notice of these and all subsequent public meetings in local newspapers approximately two weeks prior to the event.

After the scoping is completed, a Draft EIS will be published that identifies and evaluates potential land use options developed to assess impacts of the Action Alternative. The Draft EIS will identify potentially significant direct, indirect, and cumulative impacts on historical and biological resources, land use, air quality, water quality, water resources, and socioeconomics, as well as other environmental issues that could occur as a result of the Action Alternative. For potentially significant impacts, the EIS may identify avoidance, minimization, or mitigation measures to reduce these impacts, where feasible. After the Draft EIS is issued, there will be a 45-day comment period. GSA will hold public meetings in Southold, New York and Old Saybrook, Connecticut during the comment period to solicit input from the public. GSA anticipates this comment period will occur in summer 2010. After the Draft EIS, GSA will issue a Final EIS.

Reasonable Accommodations: Persons needing reasonable accommodations in order to attend and participate in public meetings should contact John Dugan, General Services Administration Property Utilization & Disposal Division, 10 Causeway Street, Room 925, Boston, MA 02222 or e-mail *john.dugan@gsa.gov*. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Dated: March 9, 2010.

John L. Dugan,

Realty Specialist, 1PZ, U.S. General Services Administration.

[FR Doc. 2010–5833 Filed 3–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0555]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Public Health Performance Standards Program Local Public Health System Assessment (OMB 0920–0555 exp. 8/31/10)—Extension—Office of State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Office of State, Tribal, Local and Territorial Support is proposing to extend the formal, voluntary data collection that assesses the capacity of local public health systems to deliver the essential services of public health. Local health departments will respond to the survey on behalf of the collective body of representatives from the local public health system. Electronic data submission will be used when local public health agencies complete the public health assessment.

A three-year approval is being sought with the current data collection instrument. The data collection instrument has been valuable in assessing performance and capacity and identifying areas for improvement.

From 1998–2002, the National Public Health Performance Standards Program convened workgroups with the National Association of County and City Health Officials (NACCHO), The Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the essential services of public health. In 2005, CDC reconvened workgroups with these same organizations to revise the data collection instruments, in order to ensure the standards remain current and improve user friendliness. There is no cost to the respondent, other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
250	1	16	4,000

Dated: March 11, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–5864 Filed 3–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0557]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Public Health Performance Standards Program State Public Health System Assessment (OMB 0920–0557 exp. 8/31/2010)—Extension—Office of State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Office of State, Tribal, Local and Territorial Support is proposing to extend the formal, voluntary data collection that assesses the capacity of state public health systems to deliver the essential services of public health. Electronic data submission will be used when state health departments complete the public health assessment.

A three-year approval is being sought with the current data collection instrument. The data collection instrument has been valuable in assessing performance and capacity and identifying areas for improvement.

From 1998–2002, the CDC National Public Health Performance Standards Program convened workgroups with the National Association of County and City Health Officials (NACCHO), The Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the essential services of public health. In 2005, CDC reconvened workgroups with these same organizations to revise the data collection instruments, in order to ensure the standards remain current and improve user friendliness. There is no cost to the respondent, other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
8	1	12	96

Dated: March 11, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–5941 Filed 3–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0580]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Public Health Performance Standards Program Local Public Health Governance Assessment (OMB 0920–0580 exp 8/31/2010)—Extension—Office of State, Tribal, Local and Territorial Support Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Office of State, Tribal, Local and Territorial Support is proposing to extend the formal, voluntary data collection that assesses the capacity of local boards of health to deliver the essential services of public health. Electronic data submission will be used when local boards of health complete the public health assessment.

A three-year approval is being sought with the current data collection instrument. The data collection instrument has been valuable in assessing performance and capacity and identifying areas for improvement.

From 1998–2002, the CDC National Public Health Performance Standards Program convened workgroups with the National Association of County and City Health Officials (NACCHO), The Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the essential services of public health. In 2005, CDC reconvened workgroups with these same organizations to revise the data collection instruments, in order to ensure the standards remain current and improve user friendliness. There is no cost to the respondent, other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
175	1	5	875

Date: March 11, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–5929 Filed 3–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular and Molecular Neuroscience.

Date: March 29, 2010.

Time: 2:30 p.m. to 4 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: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.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. 93.306, 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: March 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5951 Filed 3–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and

Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Medical Liability and Safety Innovation Projects (R21) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Medical Liability and Safety Innovation Projects (R2l)

Date: April 2, 2010 (Open on April 2 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting)

Place: Doubletree Bethesda Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Conference Room TBD, Bethesda, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is published less than 15 days in advance of the meeting date due to logistical difficulties.

Dated: March 8, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–5744 Filed 3–17–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Medical Liability and Safety Demonstration Projects (R18) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Medical Liability and Safety Demonstration Projects (R18).

Date: March 31–April 1, 2010 (Open on March 31 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Doubletree Bethesda Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Conference Room TBD, Bethesda, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is published less than 15 days in advance of the meeting date due to logistical difficulties.

Dated: March 8, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–5698 Filed 3–17–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the OS ARRA: Expansion of Research Capabilities to Study CE Complex Patients (R24) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: OS ARRA: Expansion of Research Capabilities to Study CE Complex Patients (R24).

Date: April 5–6, 2010 (Open on April 5 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Bethesda North Marriott, 5701 Marinelli Road, Conference Room TBD, Bethesda, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is published less than 15 days in advance of the meeting date due to logistical difficulties.

Dated: March 8, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–5682 Filed 3–17–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: June 10–11, 2010.

Time: June 10, 2010, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: June 11, 2010, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Arthur A. Petrosian, PhD, Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5680 Filed 3–17–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Loan Repayment.

Date: March 22, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting)

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH. DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.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. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5678 Filed 3–17–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings 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 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: Board of Regents of the National Library of Medicine; Subcommittee on Outreach and Public Information.

Date: May 11, 2010.

Time: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities.

Place: National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library Of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 11–12, 2010.

Open: May 11, 2010, 9 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 11, 2010, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 12, 2010, 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.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 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.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5676 Filed 3–17–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; International Center for Research in CAM.

Date: April 12, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: CCAM/NIH, Democracy Two, 6707 Democracy Boulevard, 401, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Dale L. Birkle, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6001 Filed 3–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Guidelines for Human Stem Cell Research

SUMMARY: The National Institutes of Health (NIH) is extending the public comment period on a revision to the definition of human embryonic stem cells (hESCs) in the "National Institutes of Health Guidelines for Human Stem Cell Research" (Guidelines). Due to a technical problem, comments entered in the Web site between 11:59 p.m. EST on February 28, 2010, through 8 a.m. EST on March 2, 2010, were not received by the agency and should be re-entered in order to be considered.

On February 23, 2010, NIH issued a **Federal Register** notice (*http://edocket.access.gpo.gov/2010/pdf/2010–3527.pdf*) requesting public comment on a proposed change to the Guidelines. Due to a technical problem, comments entered in the Web site between 11:59 p.m. EST on February 28, 2010, through 8 a.m. EST on March 2, 2010, were not received by the agency and should be re-entered in order to be considered.

DATES: Written comments on this proposed change must be received by NIH on or before March 26, 2010, in order to be considered.

ADDRESSES: Public comments may be entered at: *http://hescregapp.od.nih.gov/comments/add.htm.*

Comments may also be mailed to: NIH Stem Cell Guidelines, MSC 7997, 9000 Rockville Pike, Bethesda, Maryland 20892–7997. Comments will be made publicly available. Personally identifiable information (except for organizational affiliations) will be removed prior to making comments publicly available.

Dated: March 10, 2010.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2010–5948 Filed 3–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Regional Collaborative for the Pacific Basin (RCPB) Cooperative Agreement

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Non-competitive Supplemental Funding Award.

SUMMARY: HRSA will be providing supplemental funds to support activities for a regional Pacific Primary Care Organization to represent the six U.S.-affiliated Pacific Basin jurisdictions. The supplemental funds will be used to augment the grantee's current activities to improve data strategies and address the health workforce needs in the region.

SUPPLEMENTARY INFORMATION:

Intended recipient of the award: Research Corporation of the University of Hawaii Direct Project Pacific Islands Health Officers Association, Honolulu, Hawaii.

Amount of the award: $150,000 to improve the public health data capacity and health workforce capacity for the Pacific Basin jurisdictions.

Authority: Sections 241 and 301 of the Public Health Service Act, as amended (42 U.S.C. 238J and 241 respectively); Title 3 Section 330(k), 330(m), 333(d) of the Public Health Service Act, as amended (42 U.S.C. 254b and 254c respectively).

CFDA Number: 93.110.

Project period: The period of the supplemental support is from March 1, 2010 to August 31, 2010.

Justification for the Exception to Competition

The public health data systems in the U.S.-affiliated Pacific Islands (USAPI) are inadequate as a result of poor infrastructure capacity. There is inconsistency in data collection and analysis among the jurisdictions. The result is that the prevalence of disease conditions in the USAPI is underestimated. In addition, the lack of data increases the communicable disease threats to USAPI populations and to the U.S. communities which experience high migration of residents from these jurisdictions. Furthermore, the current health workforce in the USAPI is impacted by chronic health worker shortages and under-training of its current workforce. The workforce problems are serious, chronic, and unique to insular areas which have fewer resources to address them. A Pacific PCO will provide regional

resources to ensure more effective health workforce planning, implementation and evaluation, and coordination between local and regional health and education sector. Further funding beyond August 31, 2010, will be competitively awarded during the next competing application process for fiscal year 2010 for the Regional Collaborative for the Pacific Basin.

FOR FURTHER INFORMATION CONTACT: Lynnette S. Araki, via e-mail *Laraki@hrsa.gov,* or via telephone: 301–443–6204.

Dated: March 11, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–5981 Filed 3–17–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

National Park Sevice

60-Day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on an extension of a currently approved collection of information Office of Management and Budget (OMB)#1024–0089. 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.

DATES: Public comments will be accepted on or before May 17, 2010.

ADDRESSES: Send comments to Michael D. Wilson, Chief or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C Street, NW., Washington, DC 20240–0001 or via e-mail at *michael_d_wilson@nps.gov* or *laurie_heupel@nps.gov.* All responses to this notice will be summarized and included in the request.

To Request a Draft of Proposed Collection of Information Contact: Michael D. Wilson, Chief or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C Street, NW., Washington, DC 20240–0001 or via e-mail at *michael_d_wilson@nps.gov* or *laurie_heupel@nps.gov.* You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0089.

Title: Urban Park and Recreation Recovery Program Project Agreements.

Form: None.

Type of Request: Extension of currently approved information collection.

Current Expiration Date: August 31, 2010.

Abstract: In order to receive financial assistance or to amend an existing grant, recipients must complete and sign the project agreement form from which sets forth the obligations of the recipients and the NPS along with any special terms or conditions of the grant award.

Affected Public: State Government, DC and Territories.

Obligation to Respond: Required to Obtain a Benefit.

Frequency of Response: On occasion.

Estimated total annual responses: 3.

Estimated average completion time per response: 1.0 hour.

Estimated annual reporting burden. 3 hours.

Estimated annual non-hour cost burden. None.

The NPS also is asking for comments on (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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 we cannot guarantee that we will be able to do so.

Dated: March 12, 2010.

Cartina Miller,

Information Collection Officer, National Park Service.

[FR Doc. 2010–5870 Filed 3–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Ditch Breach Restoration Environmental Impact Statement, Rocky Mountain National Park, CO

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Grand Ditch Breach Restoration, Rocky Mountain National Park, Colorado.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement for the Grand Ditch Breach Restoration, Rocky Mountain National Park, Colorado. This effort will result in ecological restoration of the area affected by the 2003 Grand Ditch Breach. Alternatives to be considered will likely include a combination of the following: Allowing natural (passive) restoration to occur where appropriate; stabilizing steep, unstable slopes with an engineered solution; removing deposited sediment and redistributing it through the impacted area or elsewhere; removing dead timber from the impacted area and/or using it in the restoration process; regrading and recontouring areas to restore appropriate morphology and function; native plant restoration with appropriate, locally gathered plant materials; may require the use of motorized equipment such as chainsaws, heavy lift helicopters, and earthmoving equipment; may require temporary fencing to protect native plant restoration areas.

Major issues to be considered in this restoration planning process include short-and-long-term potential impacts to: Wilderness character; geological resources; geological hazards; soundscapes; surface and groundwater hydrology; stream channel, floodplain and wetland morphology and function; water quality; riparian and wetland communities; species of special concern (plants and animals); wildlife habitat; aquatic habitat; visitor experience; long-term resource productivity; archeological and historical sites.

A scoping brochure has been prepared that details the issues identified to date. Copies of that information may be obtained from the Public Information Office, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, Colorado 80517–8397, (970) 586–1206.

DATES: The Park Service will accept comments from the public through June 16, 2010.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov/romo,* and from the Public Information Office, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, Colorado 80517–8397.

FOR FURTHER INFORMATION CONTACT: Public Information Office, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, Colorado 80517–8397, (970) 586–1206, *romo_information@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to: Superintendent, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, Colorado 80517–8397. You may also comment via the Internet at *http://parkplanning.nps.gov/romo.* Finally, you may hand-deliver comments to: Superintendent, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, Colorado 80517–8397. 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.

Dated: January 11, 2010.

Mike Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 2010–5869 Filed 3–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Public Meetings for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meetings for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Cape Krusenstern National Monument SRC, Kobuk Valley National Park SRC and Gates of the Arctic National Park SRC will meet to develop and continue work on National Park Service (NPS) subsistence hunting program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone 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.

Cape Krusenstern National Monument SRC and Kobuk Valley National Park SRC Meeting Date and Location: The Cape Krusenstern National Monument SRC and Kobuk Valley National SRC meetings will be held on Monday, April 19, 2010, from 9 a.m. to 5 p.m. at the National Park Service Northwest Arctic Heritage Center, Kotzebue, AK. The meeting may end early if all business is completed.

For Further Information on the Cape Krusenstern National Monument and Kobuk Valley National Park Meeting Contact: George Helfrich, Superintendent, Western Arctic Parklands, or Willie Goodwin, Subsistence Manager, (907) 442–3890, Address: P.O. Box 1029, Kotzebue, AK 99752, or Clarence Summers, Subsistence Manager, (907) 644–3603.

Gates of the Arctic National Park SRC Meeting Date and Location: The Gates of the Arctic National Park SRC meeting will be held on Wednesday, April 28, 2010, from 9 a.m. to 10 p.m. at the Inupiat Heritage Center in Barrow, AK, (907) 852–0422. The evening session will be scheduled at the call of the Chair. A tentative plan is to break for dinner at 5 p.m., reconvene the meeting at 7 p.m. and adjourn the meeting at 10 p.m. The meeting may end early if all business is completed.

For Further Information on the Gates of the Arctic National Park SRC Meeting Contact: Dave Krupa, Subsistence Manager, Tel. (907) 455–0631, Address: 4175 Geist Road, Fairbanks, AK 99703, or Clarence Summers, Subsistence Manager, Tel. (907) 644–3603.

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to order.
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Approval of Minutes from Last SRC Meeting.
5. Review and Approve Agenda.
6. Status of SRC Membership.
7. SRC Member Reports.
8. Park Subsistence Manager's Report.
9. Park Staff Reports.
   a. Resource Management Update.
   b. Ranger Division Update.
   c. Subsistence Uses of Horns, Antlers, Bones and Plants EA Update.
10. Federal Subsistence Board Update.
11. Alaska Board of Game Update.
12. Old Business.
13. New Business.
14. Public and other Agency Comments.
15. SRC Work/Training Session.
16. Set Time and Place for next SRC Meeting.
17. Adjournment.

SRC meeting locations and dates may need to be changed based on lack of quorum, inclement weather or local circumstances. If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. The SRC meeting may end early if all business is completed.

Dated: March 10, 2010.

Sue E. Masica,

Regional Director, Alaska.

[FR Doc. 2010–5867 Filed 3–17–10; 8:45 am]

BILLING CODE P

NATIONAL INDIAN GAMING COMMISSION

The National Environmental Policy Act Procedures Manual

AGENCY: The National Indian Gaming Commission.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice reopens the period for comments on the Draft NEPA Procedures Manual published in the **Federal Register** on December 4, 2009 (74 FR 63765–74 FR 63787). Previously, the Commission reopened the comment period from January 19, 2010, to March 4, 2010 (75 FR 3756).

DATES: The comment period for the Draft NEPA Procedures Manual is being reopened from March 4, 2010, to April 15, 2010.

ADDRESSES: Please submit your comments by only one of the following means: (1) By mail to: Brad Mehaffy, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; (2) by hand delivery to: National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; (3) by facsimile to: (202) 632–7066; (4) by e-mail to: *nepa_procedures@nigc.gov;* or (5) online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bradley Mehaffy, NEPA Compliance Officer at the National Indian Gaming Commission: 202–632–7003 or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: In response to several requests, the Acting Chairman of the National Indian Gaming Commission has decided to reopen again the comment period on the Draft NEPA Procedures Manual. The comment period now will close April 15, 2010.

George T. Skibine,

Acting Chairman.

[FR Doc. 2010–5872 Filed 3–17–10; 8:45 am]

BILLING CODE 7565–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Native American Graves Protection and Repatriation Review Committee; Notice of Nomination Solicitation.

The National Park Service is soliciting nominations for one member of the Native American Graves Protection and Repatriation Review Committee. The Secretary of the Interior will appoint the member from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. The nominee must be a traditional Indian religious leader. The term traditional religious leader means a person who is recognized by members of an Indian tribe or Native Hawaiian organization as: (i) Being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or (ii) Exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices (43 C.F.R. 10.2(d)(3)).

Nominations must include the following information.

1. Nominations by traditional religious leaders: Nominations must be submitted with the nominator's original signature and daytime telephone number. The nominator must indicate how he or she meets the definition of traditional religious leader.

2.Nominations by Indian tribes or Native Hawaiian organizations: Nominations must be submitted on official tribal or organization letterhead with the nominator's original signature and daytime telephone number. The nominator must be the official authorized by the tribe or organization to submit nominations in response to this solicitation. The nomination must include a statement that the nominator is so authorized.

3. A nomination must include the following information:

a. the nominee's name, postal address, daytime telephone number, and e-mail address; and

b. nominee's resume or brief biography emphasizing the nominee's NAGPRA experience and ability to work effectively as a member of an advisory board.

c. how the nominee meets the definition of traditional religious leader found at 43 C.F.R. 10.2(d)(3) and stated above.

DATES: Nominations must be received by May 17, 2010.

ADDRESSES:

Address nominations to David Tarler, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street, NW, 8th Floor (2253), Washington, DC 20005.

SUPPLEMENTARY INFORMATION: 1. The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), at 25 U.S.C. 3006.

2. The Review Committee is responsible for -

a.monitoring the NAGPRA inventory and identification process;

b.reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;

c.facilitating the resolution of disputes;

d.compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;

e.consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;

f.consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and

g.making recommendations regarding future care of repatriated cultural items.

3. Seven members compose the Review Committee. All members are appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee.

a. Three members are appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders.

b. Three members are appointed from nominations submitted by national museum organizations and scientific organizations.

c. One member is appointed from a list of persons developed and consented to by all of the other members.

4.Members serve as Special Governmental Employees, which requires submission of annual financial disclosure reports and completion of annual ethics training.

5. Appointment terms: Members are appointed for 4–year terms and incumbent members may be reappointed for 2–year terms.

6. The Review Committee's work is completed during public meetings. The Review Committee normally meets face-to-face two times per year, and each meeting is normally two or three days. The Review Committee may also hold one or more public teleconferences of several hours duration.

7. Compensation: Review Committee members are compensated for their participation in Review Committee meetings.

8. Reimbursement: Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings.

9. Additional information regarding the Review Committee -- including the Review Committee's charter, meeting protocol, and dispute resolution procedures -- is available on the National NAGPRA Program website, at www.nps.gov/history/nagpra (click "Review Committee" in the menu on the right).

10.The terms "Indian tribe," "Native Hawaiian organization," and "traditional

religious leader" have the same meanings as in 43 C.F.R. 10.2.

FOR FURTHER INFORMATION CONTACT: David Tarler, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street, NW, 8th Floor (2253), Washington, DC 20005; telephone (202) 354–2108; email david__tarler@nps.gov.

Date: March 8, 2010

David Tarler,

Designated Federal Officer,Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2010–5932 Filed 3–17–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Teleconference Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app.II). The authority of the ACVETEO is codified in Title 38 U.S. Code, Section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; and assisting to conduct outreach to employers seeking to hire veterans. The ACVETEO will conduct a teleconference business meeting on March 31, 2010, from 3 p.m. to 4 p.m. EDT.

The ACVETEO will discuss its future direction forward in providing advice on programs to assist veterans seeking employment and to raising employer awareness as to the advantages of hiring veterans, with special emphasis on employer outreach and wounded and injured veterans. There will be an opportunity for persons or organizations to join the teleconference. Any individual or organization that wishes to join the teleconference should contact Margaret Hill Watts at (202) 693–4744. Time constraints may limit discussion.

Signed in Washington, DC, on the 9th of March 2010.

John M. McWilliam,

Deputy Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2010–5839 Filed 3–17–10; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Subcommittee on Facilities, Committee on Strategy and Budget, 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 meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Wednesday, March 24, 2010, 11 a.m.

SUBJECT MATTER: Discussion of Recent NSF Portfolio Review Materials, Issues for the Portfolio Assessment, and Next Steps.

STATUS: Open.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington,VA 22230. Room 1225 will be available to the public to listen to this teleconference meeting. All visitors must contact the Board Office at least one day prior to the meeting to arrange for a visitor's badge. Call 703–292–7000 to request your badge, which will be ready for pick-up at the visitors desk on the day of the meeting. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive their visitor's badge the day of the teleconference.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Elizabeth Strickland, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. 2010–6039 Filed 3–16–10; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9075–MLA; ASLBP No. 10–898–02–MLA–BD01]

Powertech (USA), Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility).

This Board is being established pursuant to a request for hearing filed by David Frankel *et al.* in response to a January 5, 2010 Notice of Opportunity for Hearing published in the **Federal Register** (75 FR 467) regarding Powertech (USA) Inc.'s application for a source materials license for an in situ uranium recovery facility to be located in Fall River and Custer Counties, South Dakota.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Mark O. Barnett, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 12th day of March 2010.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2010–5926 Filed 3–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2010–0025]

Florida Power and Light Company; Turkey Point, Units 3 and 4; Exemption

1.0 Background

Florida Power and Light Company (FPL, the licensee), is the holder of Facility Operating License Nos. DPR–31 and DPR–41, which authorize operation of the Turkey Point, Unit Nos. 3 and 4 (Turkey Point 3 and 4). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of two pressurized-water reactors located in Florida City, Florida.

2.0 Request

Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, Appendix G requires that fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors need to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime; and 10 CFR 50.61 provides fracture toughness requirements for protection against pressurized thermal shock (PTS) events. By letter dated March 18, 2009, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090920408), FPL proposed exemptions from the requirements of 10 CFR Part 50, Appendix G and 10 CFR 50.61, to revise certain Turkey Point 3 and 4, reactor pressure vessel (RPV) initial (unirradiated) properties using Framatome Advanced Nuclear Power Topical Report (TR) BAW–2308, Revisions 1A and 2A, "Initial RT_{NDT} of Linde 80 Weld Materials." This exemption addresses only those parts of the regulations (i.e., 10 CFR 50.61 and 10 CFR Part 50, Appendix G) which discuss the definition or use of unirradiated nil-ductility reference temperature, $RT_{NDT(U)}$, and its associated uncertainty, $\sigma\Delta$. All other requirements of 10 CFR 50.61 and 10 CFR part 50, Appendix G are unchanged by this exemption.

The licensee requested an exemption from Appendix G to 10 CFR part 50 to replace the required use of the existing Charpy V-notch and drop weight-based methodology and allow the use of an alternate methodology to incorporate the use of fracture toughness test data for evaluating the integrity of the Turkey Point 3 and 4 RPV circumferential beltline welds based on the use of the 1997 and 2002 Editions of American Society for Testing and Materials (ASTM) Standard Test Method E 1921, "Standard Test Method for Determination of Reference Temperature, T_0, for Ferritic Steels in the Transition Range," and American Society for Mechanical Engineering (ASME), *Boiler and Pressure Vessel Code* (Code), Code Case N–629, "Use of Fracture Toughness Test Data to establish Reference Temperature for Pressure Retaining Materials of Section III, Division 1, Class 1." The exemption is required since Appendix G to 10 CFR part 50, through reference to Appendix G to Section XI of the ASME Code pursuant to 10 CFR 50.55(a), requires the use of a methodology based on Charpy V-notch and drop-weight data. The licensee also requested an exemption from 10 CFR 50.61 to use an alternate methodology to allow the use of fracture toughness test data for evaluating the integrity of the Turkey Point 3 and 4 RPV circumferential beltline welds based on the use of the 1997 and 2002 Editions of ASTM E 1921 and ASME Code Case N–629. The exemption is required since the methodology for evaluating RPV material fracture toughness in 10 CFR 50.61 requires the use of the Charpy V-notch and drop-weight data for establishing the PTS reference temperature (RT_{PTS}).

On February 3, 2010, a new rule, 10 CFR 50.61a, "Alternate Fracture Toughness Requirements for Protection Against PTS Events," became effective. The NRC staff reviewed this new rule against Turkey Point's exemption request and determined that there is no effect on the exemption request. The new rule does not modify the requirements from which the licensee has sought an exemption, and the alternative provided by the new rule does not address the scope of issues associated with both 10 CFR 50.61 and 10 CFR part 50, Appendix G that the requested exemption does.

3.0 Discussion

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee requested an exemption from the use of the Charpy V-notch and drop-weight-based methodology required by 10 CFR part 50, Appendix G and 10 CFR 50.61. This exemption only modifies the methodology to be used by the licensee for demonstrating compliance with the requirements of 10 CFR part 50, Appendix G and 10 CFR 50.61, and does not exempt the licensee from meeting any other requirement of 10 CFR part 50, Appendix G and 10 CFR 50.61.

Authorized by Law

These exemptions would allow the licensee to use an alternate methodology to make use of fracture toughness test data for evaluating the integrity of the Turkey Point 3 and 4 RPV circumferential beltline welds, and would not result in changes to operation of the plant. Section 50.60(b) of 10 CFR Part 50 allows the use of alternatives to 10 CFR part 50, Appendix G, or portions thereof, when an exemption is granted by the Commission under 10 CFR 50.12. In addition, Section 50.60(b) of 10 CFR part 50 permits different NRC-approved methods for use in determining the initial material properties. As stated above, 10 CFR 50.12(a) allows the NRC to grant exemptions from the requirements of 10 CFR Part 50, Appendix G and 10 CFR 50.61. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of Appendix G to 10 CFR part 50 is to set forth fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. The methodology underlying the requirements of Appendix G to 10 CFR part 50 is based on the use of Charpy V-notch and drop-weight data. The licensee proposes to replace the use of the existing Charpy V-notch and drop-weight-based methodology by a fracture toughness-based methodology to

demonstrate compliance with Appendix G to 10 CFR part 50.

The NRC staff has concluded that the exemptions are justified based on the licensee utilizing the fracture toughness methodology specified in BAW–2308, Revisions 1A and 2A, within the conditions and limitations delineated in the NRC staff's safety evaluations (SEs), dated August 4, 2005 (ADAMS Accession Number ML052070408) and March 24, 2008 (ML080770349). The use of the methodology specified in the NRC staff's SEs will ensure that pressure and temperature limits developed for the Turkey Point 3 and 4 RPVs will continue to be based on an adequately conservative estimate of RPV material properties and ensure that the pressure-retaining components of the reactor coolant pressure boundary retain adequate margins of safety during any condition of normal operation, including anticipated operational occurrences. This exemption only modifies the methodology to be used by the licensee for demonstrating compliance with the requirements of Appendix G to 10 CFR part 50, and does not exempt the licensee from meeting any other requirement of Appendix G to 10 CFR part 50.

The underlying purpose of 10 CFR 50.61 is to establish requirements that ensure a licensee's RPV will be protected from failure during a PTS event by evaluating the fracture toughness of RPV materials. The licensee seeks an exemption from 10 CFR 50.61 to use a methodology for the determination of adjusted/indexing reference temperatures. The licensee proposes to use ASME Code Case N–629 and the methodology outlined in its submittal, which are based on the use of fracture toughness data, as an alternative to the Charpy V-notch and drop-weight-based methodology required by 10 CFR 50.61 for establishing the initial, unirradiated properties when calculating RT_{PTS} values. The NRC staff has concluded that the exemption is justified based on the licensee utilizing the methodology specified in the NRC staff's SEs regarding TR BAW–2308, Revisions 1A and 2A, dated August 4, 2005, and March 24, 2008. This TR established an alternative method for determining initial (unirradiated) material reference temperatures for RPV welds manufactured using Linde 80 weld flux (i.e., "Linde 80 welds") and established weld wire heat-specific and Linde 80 weld generic values of this reference temperature. These weld wire heat-specific and Linde 80 weld generic values may be used in lieu of the nil-ductility reference temperature (RT_{NDT}) parameter, the determination of which is specified by paragraph NB–2331 of Section III of the ASME Code. Regulations associated with the determination of RPV material properties involving protection of the RPV from brittle failure or ductile rupture include Appendix G to 10 CFR Part 50 and 10 CFR 50.61, the PTS rule. These regulations require that the initial (unirradiated) material reference temperature, IRT_{NDT}, be determined in accordance with the provisions of the ASME Code, and provide the process for determination of RT_{PTS}, the reference temperature RT_{NDT}, evaluated for the end of license fluence.

In TR BAW–2308, Revision 1, the Babcock and Wilcox Owners Group (B&WOG) proposed to perform fracture toughness testing based on the application of the "Master Curve" evaluation procedure, which permits data obtained from sample sets tested at different temperatures to be combined, as the basis for redefining the initial (unirradiated) material properties of Linde 80 welds. NRC staff evaluated this methodology for determining Linde 80 weld initial (unirradiated) material properties and uncertainty in those properties, as well as the overall method for combining unirradiated material property measurements based on T_o values (i.e., IRT_{To}), property shifts from models in Regulatory Guide (RG) 1.99, Revision 2, which are based on Charpy V-notch testing and a defined margin term to account for uncertainties in the NRC staff SE. Table 3 in the SE contains the NRC staff-accepted IRT_{To} and initial margin (denoted as σ_i) for specific Linde 80 weld wire heat numbers. In accordance with the conditions and limitations outlined in the NRC staff SE on TR BAW–2308, Revision 1, for utilizing the values in Table 3: the licensee has utilized the appropriate NRC staff-accepted IRT_{To} and σ_i values for Linde 80 weld wire heat numbers; applied a chemistry factor of 167 °F (the weld wire heat-specific chemical composition, via the methodology of RG 1.99, Revision 2, did not indicate that a higher chemistry factor should apply); applied a value of 28 °F for $\sigma\Delta$ in the margin term; and submitted values for ΔRT_{NDT} and the margin term for each Linde 80 weld in the RPV through the end of the current operating license. Additionally, the NRC's SE for TR BAW–2308, Revision 2 concludes that the revised RT_{PTS} values for Linde 80 weld materials are acceptable for referencing in plant specific licensing applications as delineated in TR BAW–2308, Revision 2 and to the extent specified under Section 4.0, Limitations and Conditions, of the SE, which states: "Future plant-specific applications for RPVs containing weld heat 72105, and weld heat 299L44, of Linde 80 welds must use the revised IRT_{To} and σ_i, values in TR BAW–2308, Revision 2." Therefore, all conditions and limitations outlined in the NRC staff SEs on TR BAW–2308, Revisions 1A and 2A, have been met for Turkey Point 3 and 4.

The use of the methodology in TR BAW–2308, Revisions 1A and 2A will ensure the PTS evaluation developed for the Turkey Point 3 and 4 RPVs will continue to be based on an adequately conservative estimate of RPV material properties and ensure the RPVs will be protected from failure during a PTS event.

Based on the above, no new accident precursors are created by allowing an exemption to use an alternate methodology to comply with the requirements of 10 CFR 50.61 in determining adjusted/indexing reference temperatures, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the licensee to use an alternate methodology to allow the use of fracture toughness test data for evaluating the integrity of the Turkey Point 3 and 4 RPV circumferential beltline welds. This change to Turkey Point 3 and 4 has no relation to security issues. Therefore, the common defense and security is not impacted by these exemptions.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR Part 50, Appendix G and 10 CFR 50.61 is to protect the integrity of the reactor coolant pressure boundary by ensuring that each reactor vessel material has adequate fracture toughness. Therefore, since the underlying purpose of 10 CFR part 50, Appendix G and 10 CFR 50.61 is achieved by an alternative methodology for evaluating RPV material fracture toughness, the special circumstances required by 10 CFR 50(a)(2)(ii) for the granting of an exemption from portions of the requirements of 10 CFR part 50, Appendix G and 10 CFR 50.61 exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the Florida Power and Light Company exemptions from portions of the requirements of Appendix G to 10 CFR part 50 and 10 CFR 50.61, to allow an alternative methodology that is based on using of fracture toughness test data to determine initial, unirradiated properties for evaluating the integrity of the Turkey Point RPV circumferential beltline welds. This exemption addresses only those parts of the regulations (i.e., 10 CFR 50.61 and 10 CFR part 50, Appendix G) which discuss the definition or use of unirradiated nil-ductility reference temperature, $RT_{NDT(U)}$, and its associated uncertainty, $\sigma\Delta$. All other requirements of 10 CFR 50.61 and 10 CFR part 50, Appendix G are unchanged by this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 4426)

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5927 Filed 3–17–10; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12072 and #12073]

California Disaster #CA–00151

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 California (FEMA–1884–DR), dated 03/08/2010.

Incident: Severe Winter Storms, Flooding, and Debris and Mud Flows.

Incident Period: 01/17/2010 through 02/06/2010.

Effective Date: 03/08/2010.

Physical Loan Application Deadline Date: 05/07/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/08/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/08/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Calaveras, Imperial, Los Angeles, Riverside, San Bernardino, Siskiyou

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12072B and for economic injury is 12073B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5882 Filed 3–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12079 and #12080]

South Dakota Disaster #SD–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1887–DR), dated 03/10/2010.

Incident: Severe Winter Storm.

Incident Period: 01/20/2010 through 01/26/2010.

Effective Date: 03/10/2010.

Physical Loan Application Deadline Date: 05/10/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/10/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/10/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Aurora, Brule, Buffalo, Campbell, Corson, Day, Deuel, Dewey, Douglas, Edmunds, Faulk, Grant, Gregory, Hand, Harding, Hughes, Hutchinson, Hyde, Jerauld, Mccook, Mcpherson, Meade, Perkins, Potter, Roberts, Sully, Turner, Walworth, Ziebach. And those portions of the Cheyenne River Indian Reservation, Sisseton-Wahpeton Indian Reservation, and Standing Rock Indian Reservation that lie within these counties.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12079B and for economic injury is 12080B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5885 Filed 3–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12075 and #12076]

Kansas Disaster #KS–00041

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 Kansas (FEMA–1885–DR), dated 03/09/2010.

Incident: Severe Winter Storms and Snowstorm.

Incident Period: 12/22/2009 through 01/08/2010.

Effective Date: 03/09/2010.

Physical Loan Application Deadline Date: 05/10/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/09/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/09/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allen, Anderson, Atchison, Bourbon, Brown, Butler, Cherokee, Cheyenne, Clay, Cowley, Crawford, Decatur, Doniphan, Elk, Franklin, Gove, Graham, Greenwood, Jackson, Jefferson, Jewell, Labette, Linn, Logan, Lyon, Marshall, Miami, Morris, Nemaha, Neosho, Norton, Osage, Phillips, Pottawatomie, Rawlins, Republic, Riley, Shawnee, Sheridan, Wabaunsee, Wallace, Washington, Wilson, Woodson, Wyandotte.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12075B and for economic injury is 12076B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5887 Filed 3–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12077 and #12078]

SOUTH DAKOTA Disaster #SD–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1886–DR), dated 03/09/2010.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/23/2009 through 12/27/2009.

DATES: *Effective Date:* 03/09/2010.

Physical Loan Application Deadline Date: 05/10/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/09/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/09/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Campbell, Clay, Gregory, Jones, Lyman, Mellette, Perkins, Shannon, Todd, Tripp, Turner, Yankton. And the portions of the PINE RIDGE RESERVATION and ROSEBUD RESERVATION that lie within the designated counties.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12077B and for economic injury is 12078B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5886 Filed 3–17–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Docket No. SBA–2010–0004]

SBA Lender Risk Rating System

AGENCY: Small Business Administration.

ACTION: Notice; extension of comment period and correction.

SUMMARY: On March 1, 2010, the Small Business Administration (SBA) published a notice in the **Federal Register** to implement changes to the agency's Risk Rating System (Risk Rating System). The Risk Rating System is an internal tool to assist SBA in assessing the risk of each active 7(a) Lender's and Certified Development Company's (CDC's) SBA loan operations and loan portfolio. The notice provided a sixty (60) day comment period, which closes on April 30, 2010. SBA is extending this comment period an additional thirty (30) days to May 30, 2010. SBA is also correcting the notice to indicate the proper docket number to be referenced when submitting comments, and to clarify the method for calculating the gross past due rate.

DATES: Effective March 18, 2010.

Comment Date: The comment period for the notice published on March 1, 2010 (75 FR 9257) is extended until May 30, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Hooper, Director, Office of Credit Risk Management, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416, (202) 205–3049.

Correction

In the **Federal Register** of March 1, 2010, in FR Doc. 2010–4266, the following corrections are made:

1. On page 9257, in the third column under the heading **ADDRESSES** the sentence "You may submit comments, identified by RIN number [INSERT RIN NUMBER], by any of the following methods:" is corrected to read as follows: "You may submit comments, identified by Docket Number SBA–2010–0004 by any of the following methods:"

2. On page 9261, in the second column, in the sixth line from the bottom of the column, the sentence "SBA calculates this rate by dividing the sum of the total gross dollars of the CDC's SBA loans in delinquency status as of this date (numerator), by the sum of the total gross dollars of its SBA loans outstanding as of this date (denominator)" is corrected to read as follows: "SBA calculates this rate by dividing the sum of the total gross dollars of the CDC's SBA loans in past-due status as of this date (numerator), by the sum of the total gross dollars of its SBA loans outstanding as of this date (denominator)."

Authority: 15 U.S.C. 634(b)(7) and 15 U.S.C. 687(f).

Dated: March 12, 2010.

Bryan Hooper,

Director, Office of Credit Risk Management.

[FR Doc. 2010–5888 Filed 3–17–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–10; SEC File No. 270–265; OMB Control No. 3235–0273.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17Ad–10, (17 CFR 240.17Ad–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–10 requires registered transfer agents to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to retain a record of all certificate detail that has been deleted from those records for a minimum of six years from the date of deletion and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a "control book"). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

There are approximately 565 registered transfer agents. The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totaling 11,300 hours industry-wide. The average cost per hour is approximately $50 per hour, with the industry-wide cost estimated at approximately $565,000. However, the information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 11, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5947 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–2(c), (d), and (h); SEC File No. 270–149; OMB Control No. 3235–0130.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–2(c), (d), and (h), (17 CFR 240.17Ad–2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–2(c), (d) and (h) enumerates the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 740 transfer agents, approximately five notices pursuant to Rule 17Ad–2(c), (d), and (h) are filed annually. The estimated annual cost to respondents is minimal. In view of: (a) The readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion that such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on average, most notices require approximately one-half hour to prepare. The Commission staff estimates that transfer agents spend an average of two and a half hours per year complying with the rule.

The retention period for the recordkeeping requirement under Rule

17Ad–2(c), (d), and (h) is not less than two years following the date the notice is submitted. The recordkeeping requirement under this rule is mandatory to assist the Commission in monitoring transfer agents who fail to meet the minimum performance standards set by the Commission rule. This rule does not involve the collection of confidential information. Please note that a transfer agent is not required to file under the rule unless it does not meet the minimum performance standards for turnaround, processing or forwarding items received for transfer during a month. Persons should note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 11, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5919 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29171; File No. 812–13690]

Integrity Life Insurance Company, et al.; Notice of Application

March 10, 2010.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "Act").

Applicants: Integrity Life Insurance Company ("Integrity"), Separate Account I of Integrity Life Insurance Company ("Integrity Separate Account I"), Separate Account II of Integrity Life Insurance Company ("Integrity Separate Account II"), National Integrity Life Insurance Company ("National Integrity" and together with Integrity, the "Integrity Companies"), Separate Account I of National Integrity Life Insurance Company ("National Integrity Separate Account I"), and Separate Account II of National Integrity Life Insurance Company ("National Integrity Separate Account II," together with Integrity Separate Account I, Integrity Separate Account II, and National Integrity Separate Account I, the "Separate Accounts").

Summary of Application: Applicants seek an order approving the proposed substitution of shares of certain portfolios of the Variable Insurance Products Fund III held by the Separate Accounts for shares of portfolios of Variable Insurance Products Fund III and in the case of the Fidelity Contrafund, shares of Variable Insurance Products Fund II as follows: Fidelity VIP Dynamic Capital Appreciation: Service Class 2 with Fidelity VIP Contrafund: Service Class 2; Fidelity VIP Growth & Income: Service Class 2 with Fidelity VIP Balanced: Service Class 2; Fidelity VIP Growth & Income: Service Class with Fidelity VIP Balanced: Service Class; Fidelity VIP Growth & Income: Initial Class with Fidelity VIP Balanced: Initial Class; Fidelity VIP Growth Opportunities: Service Class 2 with Fidelity VIP Contrafund: Service Class 2; Fidelity VIP Growth Opportunities: Service Class with Fidelity VIP Contrafund: Service Class; Fidelity VIP Growth Opportunities: Initial Class with Fidelity VIP Contrafund: Initial Class; and Fidelity VIP Value Strategies: Service Class 2 with Fidelity VIP Mid Cap: Service Class 2 (the "Substitution").

Filing Date: The application was originally filed on September 3, 2009 and amended on January 19, 2010, and March 10, 2010.

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 Applicants 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 6, 2010, and should be accompanied by proof of service on Applicants 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 Rhonda S. Malone, Esq., Associate Counsel—Securities, Western and Southern Financial Group, Inc., 400 Broadway, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Michelle Roberts, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

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. Integrity is a stock life insurance company organized under the laws of Ohio. Integrity is a wholly owned subsidiary of The Western and Southern Life Insurance Company, a stock life insurance company organized under the laws of Ohio. The Western and Southern Life Insurance Company is wholly owned by an Ohio-domiciled intermediate holding company, Western & Southern Financial Group, Inc., which is wholly owned by an Ohio-domiciled mutual insurance holding company, Western & Southern Mutual Holding Company.

2. Integrity Separate Account I and Integrity Separate Account II are registered under the Act as unit investment trusts (File Nos. 811–04844 and 811–07134, respectively). They are used to fund variable annuity contracts issued by Integrity. ("Integrity Contracts")

3. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a wholly owned direct subsidiary of Integrity and an indirect subsidiary of The Western and Southern Life Insurance Company.

4. National Integrity Separate Account I and National Integrity Separate Account II are registered under the Act as unit investment trusts (File Nos. 811–04846 and 811–07132, respectively). They are used to fund variable annuity contracts issued by National Integrity ("National Integrity Contracts").

5. Integrity Contracts and the National Integrity Contracts cited in the application and affected by the Substitution are flexible premium deferred variable annuities (the "Contracts").

6. Each Contract permits allocations of value to available fixed and variable subaccounts; each variable subaccount invests in a specific investment portfolio of an underlying mutual fund. Of the 24 Contracts affected by this application, 18 Contracts offer the same 56 portfolios ("Subset 1"), four Contracts offer the same 54 portfolios ("Subset 2") and two Contracts offer the same 43 portfolios ("Subset 3").

7. Each Contract permits transfers from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges described below. No sales charge applies to such a transfer of value among subaccounts. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 is imposed on transfers in excess of twelve transfers in a contract year.

8. Each Contract reserves the right, upon notice to Contract owners and compliance with applicable law, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount. Each Contract's prospectus provides that Applicants may add, remove or combine subaccounts or withdraw assets relating to a Contract from one subaccount and put them into another.

9. The Integrity Companies propose the substitution of four portfolios (two of which include three classes each) of Variable Insurance Products Fund III (the "Existing Portfolios"). As replacements, the Integrity Companies propose three portfolios (two of which include three classes) of Variable Insurance Products Fund III and, in the case of Fidelity VIP Contrafund, Variable Insurance Products II (the "Replacement Portfolios"). All of the Replacement Portfolios are currently available in the Contracts. Neither Variable Insurance Products Fund III, Variable Insurance Products Fund II, nor Fidelity Management and Research Company (collectively referred to as "Fidelity") are affiliated with Applicants.

10. The investment objective, strategies and risks of each Replacement Portfolio are the same as, or similar to, the investment objective, strategies and risks of the corresponding Existing Portfolio. For each Existing Portfolio and each Replacement Portfolio, the investment objective, principal investment strategies and principal risks are shown in the table that follows.

Replacement 1	Existing portfolio	Replacement portfolio
Name	Fidelity VIP dynamic capital appreciation	Fidelity VIP Contrafund
Investment Objective	Capital appreciation	Long-term capital appreciation.
Principal Investment Strategies.	Invests primarily in common stocks—either growth stocks, value stocks or both—of domestic and foreign issuers using fundamental analysis to select investments.	Invests primarily in common stocks—either growth stocks, value stocks or both—of domestic and foreign issuers using fundamental analysis to select investments in companies believed to be undervalued by the public; allocates assets across different market sectors using different managers.
Principal Risks	• Stock market volatility • Issuer-specific changes • Foreign exposure	• Stock market volatility. • Issuer-specific changes. • Foreign exposure.
Replacements 2, 3 and 4	Existing portfolio	Replacement portfolio
Name	Fidelity VIP growth & income	Fidelity VIP balanced
Investment Objective	High total return through a combination of current income and capital appreciation.	Income and capital growth consistent with reasonable risk.
Principal Investment Strategies.	Invests a majority of assets in common stock with current dividends and potential for capital appreciation; potentially invests in bonds, including lower quality debt securities and stocks not currently paying dividends but offering prospects for future income and capital appreciation; invests primarily in common stocks—either growth stocks, value stocks or both—of domestic and foreign issuers using fundamental analysis to select investments.	Invests approximately 60% of assets in stocks or other equity securities—either growth stocks, value stocks or both—of domestic and foreign issuers, and remainder in bonds or other debt securities including lower quality debt securities when the outlook is neutral; investing at least 25% of assets in fixed income senior securities; using fundamental analysis to select investments; engaging in transactions that have a leveraging effect on the fund; investing in Fidelity's central funds.
Principal Risks	• Stock market volatility • Issuer-specific changes • Foreign exposure • Interest rate changes	• Stock market volatility. • Issuer-specific changes. • Foreign exposure. • Interest rate changes. • Leverage risk. • Prepayment.
Replacements 5, 6 and 7	Existing portfolio	Replacement portfolio
Name	Fidelity VIP growth opportunities	Fidelity VIP contrafund
Investment Objective	Capital growth	Long-term capital appreciation.
Principal Investment Strategies.	Invests primarily in common stocks of domestic and foreign issuers using fundamental analysis to select investments in companies believed to have above average growth potential.	Invests primarily in common stocks—either growth stocks, value stocks or both—of domestic and foreign issuers using fundamental analysis to select investments in companies believed to be undervalued by the public; allocates assets across different market sectors using different managers.
Principal Risks	• Stock Market Volatility • Issuer-Specific Changes • Foreign exposure	• Stock Market Volatility. • Issuer-Specific Changes. • Foreign exposure.

Replacements 5, 6 and 7	Existing portfolio	Replacement portfolio
Name	Fidelity VIP growth opportunities	Fidelity VIP contrafund
	• Growth investing.	
Replacement 8	Existing portfolio	Replacement portfolio
Name	Fidelity VIP value strategies	Fidelity VIP mid cap
Investment Objective	Capital appreciation	Long-term capital growth.
Principal Investment Strategies.	Invests primarily in common stocks of domestic and foreign issuers using fundamental analysis to select investments in companies believed to be undervalued in the marketplace in relation to factors such as assets, sales, earnings or growth potential; focusing investment in medium sized companies but may invest in larger or smaller companies.	Invests primarily in common stocks—either growth stocks, value stocks or both—of domestic and foreign issuers using fundamental analysis to select investments; normally invests at least 80% of assets in companies with medium market capitalizations similar to companies in the Russell Midcap Index [1] or Standard & Poor's MidCap 400 Index; [2] potentially investing in companies with smaller or larger market capitalizations.
Principal Risks	• Stock market volatility • Foreign exposure • Issuer-specific changes • Value investing	• Stock market volatility. • Foreign exposure. • Issuer-specific changes. • Mid cap investing.

[1] The capitalization range for the Russell Midcap Index is $829 million to $12.2 billion as of May 31, 2009.
[2] The capitalization range for the Standard & Poor's MidCap 400 Index is $750 million to $3.3 billion as of June 30, 2009.

11. Applicants state that the proposed substitutions are expected to provide benefits to the Contract owners, including better performing funds and simplification of fund offerings through the elimination of overlapping and duplicative portfolios in certain asset categories, particularly the large growth category. After the Substitution, Contract owners will continue to be able to select among funds with a full range of investment objectives, investment strategies and risks. Of the 24 Contracts affected by the Substitution, Contract owners in Subset 1 (18 Contracts) will be able to select among 52 portfolios, Contract owners in Subset 2 (four Contracts) will be able to select among 50 portfolios, and Contract owners in Subset 3 (two Contracts) will be able to select among 40 portfolios.

12. Applicants represent that each Replacement Portfolio has lower total gross and net expense ratios and equal or lower management fees than the corresponding Existing Portfolio. Service fees charged by each Replacement Portfolio pursuant to a 12b–1 plan are equal to those charged by the Existing Portfolio. The management fees the Replacement Portfolios and Existing Portfolios (the "Portfolios") pay to Fidelity Management and Research Company ("FMR") have two components: A group fee rate and an individual fund fee rate. The group fee rate is based on the monthly average net assets of all the registered investment companies with which FMR has management contracts. The second component is the individual fund fee rate, which for each Existing Portfolio (except one) is the same as the rate for the Replacement Portfolio, 0.30%. In the one instance, the rate paid on the Fidelity VIP Balanced Portfolio (Replacement Portfolio) is 0.15%, which is lower than is paid on the Fidelity VIP Growth and Income Portfolio (Existing Portfolio) of 0.20%. Detailed expense information is set forth in the Chart below. By reducing expenses, the Applicants represent that the Integrity Companies are offering their Contract owners and prospective investors a selection of better-managed funds at a reduced cost.

EXPENSES

	Name	Management fee (percent)	12b–1 fee (percent)	Other expense (percent)	Total expense (percent)	Waivers and reimbursements (percent)	Net expense (percent)
Existing	Fidelity VIP Dynamic Capital Appreciation: Service Class 2.	0.56	0.25	0.31	1.12	0.03	1.09
Replacement	Fidelity VIP Contrafund: Service Class 2.	0.56	0.25	0.10	0.91	0.01	0.90
Existing	Fidelity VIP Growth & Income: Service Class 2.	0.46	0.25	0.13	0.84	0.00	0.84
Replacement	Fidelity VIP Balanced: Service Class 2.	0.41	0.25	0.15	0.81	0.01	0.80
Existing	Fidelity VIP Growth & Income: Service Class.	0.46	0.10	0.13	0.69	0.00	0.69
Replacement	Fidelity VIP Balanced: Service Class	0.41	0.10	0.17	0.68	0.00	0.68
Existing	Fidelity VIP Growth & Income: Initial Class.	0.46	0.00	0.13	0.59	0.00	0.59
Replacement	Fidelity VIP Balanced: Initial Class ..	0.41	0.00	0.14	0.55	0.00	0.55
Existing	Fidelity VIP Growth Opportunities: Service Class 2.	0.56	0.25	0.16	0.97	0.00	0.97
Replacement	Fidelity VIP Contrafund: Service Class 2.	0.56	0.25	0.10	0.91	0.01	0.90

EXPENSES—Continued

	Name	Management fee (percent)	12b–1 fee (percent)	Other expense (percent)	Total expense (percent)	Waivers and reimbursements (percent)	Net expense (percent)
Existing	Fidelity VIP Growth Opportunities: Service Class.	0.56	0.10	0.15	0.81	0.00	0.81
Replacement	Fidelity VIP Contrafund: Service Class.	0.56	0.10	0.10	0.76	0.01	0.75
Existing	Fidelity VIP Growth Opportunities: Initial Class.	0.56	0.00	0.15	0.71	0.00	0.71
Replacement	Fidelity VIP Contrafund: Initial Class	0.56	0.00	0.10	0.66	0.01	0.65
Existing	Fidelity VIP Value Strategies: Service Class 2.	0.56	0.25	0.18	0.99	0.01	0.98
Replacement	Fidelity VIP Mid Cap: Service Class 2.	0.56	0.25	0.12	0.93	0.01	0.92

13. Applicants submit that each of the Replacement Portfolios has demonstrated better performance than the corresponding Existing Portfolios during each of the periods measured. Detailed performance information is set forth in the Application.

Applicants Legal Analysis and Conditions

1. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's cash value, death benefit, living benefit or in the dollar value of his or her investment in any of the subaccounts. Accordingly, there will be no financial impact on any Contract owner. The Substitution will be effected by having each of the subaccounts that invests in the Existing Portfolios redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Portfolios at the net asset value calculated on the same date.

2. The Substitution will be described in detail in a written notice mailed to Contract owners. The notice will inform Contract owners of the Integrity Companies' intent to implement the Substitution and describe the Substitution, the reasons for engaging in the Substitution and how the Substitution will be implemented. Details regarding the effect on any investment in a GLWB will also be provided. The notice will be mailed to all Contract owners at least 30 days prior to the Substitution and will inform affected Contract owners that they may transfer assets from the subaccounts investing in the Existing Portfolios at anytime after receipt of the notice, and from the subaccounts investing in the Replacement Portfolios for 30 days after the Substitution, to subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year. A supplement will be filed with the Commission for all current prospectuses containing the information to be included in the notice.

3. Each Contract owner will be provided with a prospectus for the Replacement Portfolios applicable to them. Within five days after the Substitution, the Integrity Companies will send each affected Contract owner written confirmation that the Substitution has occurred.

4. The Integrity Companies will pay all expenses and transaction costs of the Substitution, including all legal, accounting and allocated brokerage expenses relating to the Substitution. No costs will be borne by Contract owners. Affected Contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Integrity Companies under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to Contract owners and will in no way alter the tax benefits to Contract owners.

5. Each Contract and its prospectus expressly discloses the reservation of the Applicants' right, subject to applicable law, to substitute shares of another portfolio for shares of the portfolio in which a subaccount is invested.

6. The investment objectives and policies of the Replacement Portfolios are similar to those of the corresponding Existing Portfolios such that Contract owners will have reasonable continuity in investment expectations.

7. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against because the Contract owner will continue to have the same type of investment choices, with better potential returns and the same or lower expenses and will not otherwise have any incentive to redeem their shares or terminate their Contracts.

8. The purposes, terms and conditions of the proposed Substitution are consistent with the protection of investors, and the principles and purposes of Section 26(c), and do not entail any of the abuses that Section 26(c) is designed to prevent.

9. Current gross and net annual expenses in each Replacement Portfolio are lower than those of the corresponding Existing Portfolios.

10. Each Replacement Portfolio is an appropriate portfolio to move Contract owners' values currently allocated to the Existing Portfolios because the portfolios have similar investment objectives, strategies and risks.

11. The Substitution will be at the net asset values of the respective portfolio shares without the imposition of any transfer or similar charge and with no change in the amount of any Contract owners' values.

12. The Substitution will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitution than before the Substitution and will result in Contract owners' Contract values being moved to portfolios with the lower current total net annual expenses.

13. In connection with assets held under Contracts affected by the Substitution, the Integrity Companies will not receive, for three years from the date of the Substitution, any direct or indirect benefits from the Replacement Portfolios, their advisors or

underwriters (or their affiliates) at a rate higher than that which they had received from the Existing Portfolios, their advisors or underwriters (or their affiliates), including without limitation 12b–1 Fees, shareholder service, administration or other service fees, revenue sharing or other arrangements in connection with such assets. Applicants represent that the Substitution and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid by the Replacement Portfolios, their advisors or underwriters, or their respective affiliates.

14. Notice of the proposed Substitution will be mailed to all Contract owners at least 30 days prior to the Substitution. All Contract owners will have an opportunity at anytime after receipt of the notice of the Substitution and for 30 days after the Substitution to transfer Contract account value affected by the Substitution to other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the Contract owner's free transfers in a contract year.

15. Within five days after the Substitution, the Integrity Companies will send to its affected Contract owners a written confirmation that the Substitution has occurred.

16. The Substitution will in no way alter the insurance benefits to Contract owners or the contractual obligations of the Integrity Companies.

17. The Substitution will have no adverse tax consequences to Contract owners and will in no way alter the tax benefits to Contract owners.

Conclusion

For the reasons and upon the facts set forth above, the Applicants believe that the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5921 Filed 3–17–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61698; File Nos. 10–194 and 10–196 [1]]

In the Matter of the Applications of EDGX Exchange, Inc., and EDGA Exchange, Inc. for Registration as National Securities Exchanges; Findings, Opinion, and Order of the Commission

March 12, 2010.

I. Introduction

On May 7, 2009, EDGX Exchange, Inc. ("EDGX") and EDGA Exchange, Inc. ("EDGA") (each, an "Exchange," and, together, the "Exchanges") each submitted to the Securities and Exchange Commission ("Commission") a Form 1 application (each, a "Form 1 Application," and, together, the "Form 1 Applications") under the Securities Exchange Act of 1934 ("Act") seeking registration as a national securities exchange pursuant to Section 6 of the Act.[2] On July 30, 2009, each Exchange submitted Amendment No. 1 to its Form 1 Application. Notice of the Form 1 Applications, each as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 17, 2009.[3] The Commission received two comment letters regarding the Form 1 Applications, as modified by Amendment No. 1.[4] On February 11, 2010, each Exchange submitted Amendment No. 2 to its Form 1 Application.[5]

[1] In the Notice (as defined below), EDGA Exchange, Inc. was assigned File No. 10–194 and EDGX Exchange, Inc. was assigned File No. 10–193. The EDGX Exchange, Inc. file number was subsequently redesignated as File No. 10–196. The EDGA Exchange, Inc. file number remains unchanged.

[2] 15 U.S.C. 78f. On September 11, 2009, the Commission issued an order granting EDGX and EDGA exemptive relief, subject to certain conditions, in connection with filing of their Form 1 applications. *See* Securities Exchange Act Release No. 60650 (September 11, 2009), 74 FR 47828.

[3] *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 ("Notice").

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq OMX Group, Inc., dated November 11, 2009 ("Nasdaq Letter") and from Daniel Mathisson, Managing Director, and Vaishali Javeri, Director and Counsel, Credit Suisse Securities (USA) LLC, dated December 4, 2009 ("Credit Suisse Letter"). Direct Edge Holdings LLC responded to the Nasdaq Letter. *See* letter from William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 13, 2009 ("DE Holdings Response").

[5] In Amendment No. 2, each Exchange modified several Exhibits in its Form 1 Application. Specifically, each Exchange's Amendment No. 2:

(a) Modifies Exhibit B to: (A) Specify the dates when the non-U.S. Upstream Owners adopted the Supplemental Resolutions (as defined below); and (B) revise the proposed rules of each Exchange to: (i) Indicate in Rules 1.5(p), 11.9(a), 14.2(g), 14.3(d) that the Post-Closing Session ends at 8 p.m.; (ii) add Rule 2.3(b)–(f) (Member Eligibility & Registration) to require registration of Authorized Traders and Principals in the appropriate category of registration as determined by the Exchange, and make conforming amendments to the interpretations and policies for Rule 2.5; (iii) reflect Direct Edge ECN LLC's assumed name of DE Route in Rules 2.11 and 2.12, regarding its roles as an inbound and outbound router; (iv) add Rule 3.21 (Customer Disclosures) to require Exchange members that execute trades on behalf of customers during either Pre-Opening or Post-Closing Sessions offered by the Exchange to provide customers with notice regarding the risks of trading during extended hours, consistent with the rules of other self-regulatory organizations; (v) amend Rule 11.5(a) to clarify that market orders are not eligible for the Pre-Opening and Post-Closing Sessions; (vi) add new Interpretation and Policy .01 to Rule 14.1 to explain the circumstances under which the Exchange will halt trading during the Pre-Opening and Post-Closing Sessions; (vii) amend Rule 11.11 to enable DTC/NSCC authorized clearing brokers to clear trades on the Exchange, even though they are not Exchange members; (viii) add section (d) to Rule 11.12 (Limitation of Liability) to establish a procedure to compensate Exchange members in relation to Exchange systems failures or a negligent act or omission of an Exchange employee, consistent with industry practice; (ix) revise the Exchange's Clearly Erroneous Trading rules (Rule 11.13) to comport with those filed by other registered national securities exchanges; and (x) add Rule 12.13 (Trading Ahead of Research Reports).

(b) Revises Exhibit C to clarify, in the description of Direct Edge ECN LLC, the cessation of its capacity as an electronic communications network following the Exchanges' commencement of operations as national securities exchanges.

(c) Modifies Exhibit E to: (A) Provide a clarification with respect to the Exchange's membership in various order and trade reporting organizations; (B) refer to the planned phase-in of securities to be traded on the Exchange; and (C) update a reference to the provision of technical systems specifications and the addition of a copy of the Direct Edge Next Gen FIX Specifications (Version 1.0) (Users Manual).

(d) Revises Exhibit F to amend the Clearing Letter of Guarantee, User Agreement, Routing Agreement, and Exchange Data Vendor Agreement to reflect comments by potential Exchange members and industry practice.

(e) Modifies Exhibit I to state that, prior to the launch of the Exchange, DE Holdings will make a capital contribution into the Exchange's capital account, and to represent that DE Holdings will enter into an explicit agreement with the Exchange to provide adequate funding for its operations.

(f) Amends Exhibit J to state that all Directors, including Owner Directors and the Chief Executive Officer, will serve staggered three-year terms, subject to the Exchange's Bylaws.

(g) Revises to Exhibit L to describe the Exchange's execution of a regulatory services agreement with the ISE LLC and the Financial Industry Regulatory Authority ("FINRA") to conduct various regulatory services on behalf of the Exchange.

The changes proposed in Amendment No. 2 are either not material, consistent with the existing rules of other registered national securities exchanges, or responsive to the concerns of the Commission.

II. Statutory Standards

Under sections 6(b) and 19(a) of the Act,[6] the Commission shall by order grant a registration as a national securities exchange if it finds, among

[6] 15 U.S.C. 78f(b) and 78s(a).

other things, that the exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by, its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that the Exchanges' Form 1 Applications for exchange registration meet the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of the Exchanges are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) Assure fair representation of an exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (3) protect investors and the public interest. The Commission also believes that the rules of the Exchanges are consistent with section 11A of the Act.[7] Finally, the Commission finds that the proposed rules of the Exchanges do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[8]

III. Discussion

A. Corporate Structure

EDGX and EDGA each have applied to the Commission to register as a national securities exchange. EDGX and EDGA currently operate as separate trading platforms of Direct Edge ECN LLC ("DECN"), an electronic communications network ("ECN") that is a registered broker-dealer. Direct Edge Holdings LLC ("DE Holdings"), a Delaware limited liability company, wholly owns EDGX, EDGA, and DECN. Following EDGX's and EDGA's commencement of operations as national securities exchanges, DECN will cease operations as an ECN and DECN (doing business as DE Route) will begin to operate as a facility of the Exchanges that provides outbound order routing for the Exchanges. DECN also will provide inbound routing services to EDGX from EDGA, and to EDGA from EDGX.[9]

As a limited liability company, DE Holdings is overseen by a Board of Managers ("DE Holdings Board") and ownership in DE Holdings is represented by limited liability membership interests. The Fourth Amended and Restated Limited Liability Company Operating Agreement of DE Holdings ("DE Holdings Operating Agreement") refers to the holders of such interests as "Members."[10] The Members of DE Holdings and their respective ownership interests are: International Securities Exchange Holdings, Inc. ("ISE Holdings") (31.54%);[11] Citadel Derivatives Group LLC (19.9%); The Goldman Sachs Group, Inc. (19.9%); Knight/Trimark, Inc. (19.9%); and the ISE Stock Exchange Consortium Members (collectively 8.76%).[12]

1. Ownership of ISE Holdings

ISE Holdings, the owner of a 31.54% equity interest in DE Holdings, is also the parent company of International Securities Exchange, LLC ("ISE LLC"), a national securities exchange registered under section 6 of the Exchange Act. Following a corporate transaction in 2007 (the "2007 Transaction"),[13] ISE Holdings became a wholly-owned subsidiary of U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings"), which is wholly owned by Eurex Frankfurt AG ("Eurex Frankfurt," and, with Deutsche Börse AG, the "German Upstream Owners"). Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG ("Eurex Zürich"), which, in turn, is jointly owned by Deutsche Börse AG and SIX Swiss Exchange AG ("SWX"), a wholly-owned subsidiary of SIX Group AG (SIX Group AG, SWX, and Eurex Zürich are referred to collectively as the "Swiss Upstream Owners," and the Swiss Upstream Owners and the German Upstream Owners are referred to collectively as the "non-U.S. Upstream Owners"). As a result of ISE Holdings' purchase of an equity interest in DE Holdings,[14] the non-U.S. Upstream Owners, U.S. Exchange Holdings (together with the non-U.S. Upstream Owners, the "Upstream Owners"), and ISE Holdings acquired indirect ownership and voting interests in EDGX and EDGA.

2. Amendments to the Corporate Resolutions of the Non-U.S. Upstream Owners and Corporate Governing Documents of ISE Holdings and U.S. Exchange Holdings

In connection with the 2007 Transaction, each of the non-U.S. Upstream Owners adopted corporate resolutions (collectively, the "2007 Resolutions") designed to maintain the independence of the regulatory functions of ISE LLC.[15] In addition, the Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings Certificate") and the Amended and Restated Bylaws of U.S. Exchange Holdings ("U.S. Exchange Holdings Bylaws"), as well as the Certificate of Incorporation of ISE Holdings ("ISE Holdings Certificate") and the Amended and Restated Bylaws of ISE Holdings ("ISE Holdings Bylaws") included provisions designed to maintain the independence of the regulatory functions of ISE LLC.[16]

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[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78f(b)(8).

[9] *See* EDGX and EDGA Rules 2.11 and 2.12. *See also* Section III.G, *infra.*

[10] Specifically, the DE Holdings Operating Agreement defines a "Member" to include any Person (i) executing the DE Holdings Operating Agreement as a Member of DE Holdings as of April 13, 2009; or (ii) subsequently admitted as an additional or substitute Member of DE Holdings. References to "Members," as defined in the DE Holdings Operating Agreement and used in connection with DE Holdings, should be distinguished from references to "members," the latter refers to "members" as defined in section 3(a)(3) of the Exchange Act, 15 U.S.C. 78c(a)(3).

[11] *See* Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (File No. SR–ISE–2008–85) (order relating to ISE Holdings' purchase of an ownership interest in DE Holdings) ("DE Holdings Order").

[12] The ISE Stock Exchange Consortium members are: Bear Rex, Inc.; DB US Financial Markets Holding Corporation; Canopy Acquisition Corporation; IB Exchange Corp.; LabMorgan Corporation; Merrill Lynch L.P. Holdings, Inc.; Nomura Securities International, Inc.; Sun Partners LLC; and VCM Capital Markets, LLC.

[13] *See* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (File No. SR–ISE–2007–101) (order relating to the 2007 Transaction) ("Eurex Order").

[14] *See* DE Holdings Order, *supra* note 11.

[15] *See* Eurex Order, *supra* note 13. In 2007, the non-U.S. Upstream Owners were Eurex Frankfurt, Deutsche Börse AG, Eurex Zürich, SWX, SWX Group, and Verein SWX Swiss Exchange.

[16] In this regard, through the 2007 Resolutions and the corporate governing documents of ISE Holdings and U.S. Exchange Holdings, the Upstream Owners and ISE Holdings committed, among other things: That they, and each of their directors, officers, and employees, would comply with the federal securities laws and with the Commission and ISE LLC; that their directors, officers, and employees would give due regard to preserving the independence of the self-regulatory functions of ISE LLC (or in the case of the non-U.S. Upstream Owners, that they would take reasonable steps necessary to cause their officers and employees involved in the activities of ISE LLC to give due regard to preserving the independence of the self-regulatory functions of ISE LLC); that their books and records related to the activities of ISE LLC would be subject at all times to inspection and copying by the Commission and ISE LLC, and

The 2007 Resolutions and the corporate governing documents of U.S. Exchange Holdings and ISE Holdings related to ISE LLC and, by their terms, did not apply to additional national securities exchanges, such as EDGX and EDGA, that the Upstream Owners and ISE Holdings might control, directly or indirectly, as a result of a subsequent transaction. To maintain the independence of the regulatory function of EDGX and EDGA, each of the non-U.S. Upstream Owners has adopted supplemental resolutions (the "Supplemental Resolutions") that apply the 2007 Resolutions to EDGX and EDGA in the same manner and to the same extent as the 2007 Resolutions apply to ISE LLC.[17] Accordingly, the Supplemental Resolutions, which are included in the Form 1 Applications, extend to EDGX and EDGA the commitments that the non-U.S. Upstream Owners made in the 2007 Resolutions with respect to ISE LLC.[18]

In addition, the Commission has approved changes to the U.S. Exchange Holdings Certificate and U.S. Exchange Holdings Bylaws, and to the ISE Holdings Certificate and ISE Holdings Bylaws, that apply these governing documents to any national securities exchange, or facility thereof, that U.S. Exchange Holdings or ISE Holdings, as applicable, controls, directly or indirectly, including EDGX and EDGA.[19]

The Commission believes that the Supplemental Resolutions, the U.S. Exchange Holdings Certificate and U.S. Exchange Holdings Bylaws, as amended, and the ISE Holdings Certificate and ISE Holdings Bylaws, as amended, will assist EDGX and EDGA in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act, as discussed in greater detail below.[20]

3. Swiss Resolutions and the 2009 Procedure

As discussed more fully in the Eurex Order,[21] Swiss law designed to protect Swiss sovereignty raised concerns about the ability of the Swiss Upstream Owners to provide the Commission with direct access to information, including books and records, related to the activities of ISE LLC.[22] To avoid conflict with Swiss law and to facilitate the 2007 Transaction, the Commission and the Swiss Federal Banking Commission ("SFBC") developed a procedure (the "2007 Procedure") under which the SFBC undertook to serve as a conduit for unfiltered delivery of books and records of the Swiss Upstream Owners related to the activities of ISE LLC.[23] Accordingly, each 2007 Resolution adopted by the Swiss Upstream Owners (the "2007 Swiss Resolutions") provided that, where necessitated by Swiss law, a Swiss Upstream Owner would provide information related to the activities of ISE LLC, including the books and records of such owner related to the activities of ISE LLC, to the Commission promptly through the SFBC.[24] Moreover, oral exchanges between each Swiss Upstream Owner and the Commission related to the activities of ISE LLC would include the participation of SFBC.[25]

By its terms, the 2007 Procedure applied solely to information of the Swiss Upstream Owners related to the activities of ISE LLC, including books and records related to the activities of ISE LLC. To accommodate the Swiss Upstream Owners' indirect ownership and voting interest in EDGX and EDGA, the Commission and FINMA (the successor to the SFBC) have developed a procedure (the "2009 Procedure") that is substantially similar to the 2007 Procedure, except that it will apply to any U.S. securities exchange, or facility thereof, that ISE Holdings controls, directly or indirectly, including EDGX and EDGA. The 2009 Procedure, which will become effective upon the Commission's approval of the Exchanges' Form 1 applications, will supersede the 2007 Procedure.

Under the 2009 Procedure, FINMA would serve as a conduit for the delivery of information of the Swiss Upstream Owners related to the activities of any registered national securities exchange controlled, directly or indirectly, by ISE Holdings, including EDGX and EDGA. The Commission's usual practice is to have direct access to books and records related to the activities of a U.S. securities exchange. However, subject to the condition that the Swiss Upstream Owners will promptly deliver such information to the Commission,[26] coupled with the fact that under Bylaws of the Exchanges, all trading records of the Exchanges must be maintained in the United States,[27] the Commission believes that the provisions of the 2007 Resolutions adopted by the Swiss Upstream Owners, as supplemented by the Supplemental Resolutions adopted by the Swiss Upstream Owners, related to the Commission's access to the books and records of the Swiss Upstream Owners through FINMA, should not result in a level of access materially different from that agreed to by other entities that control U.S. securities exchanges.[28]

would be deemed to be the books and records of ISE LLC for purposes of and subject to oversight pursuant to the U.S. securities laws; and, that, for so long as they controlled ISE LLC, any change to their governing documents would be submitted to the board of directors of ISE LLC and, if ISE LLC determined that such change was required to be filed with the Commission, such change would not be effective until filed with, or filed with and approved by the Commission, in accordance with Section 19(b) of the Act.

[17] The enumeration in each of the 2007 Resolutions is identical. The enumeration in each of the Supplemental Resolutions also is identical. Therefore, unless otherwise specified, reference herein to certain enumerated resolutions applies to all of the 2007 Resolutions or to all of the Supplemental Resolutions, as applicable.

[18] *Id.*

[19] *See* Securities Exchange Act Release No. 61498 (February 4, 2010), 75 FR 7229 (February 18, 2009) (order approving File No. SR–ISE–2009–90) (revising the U.S. Exchange Holdings Certificate, the U.S. Exchange Holdings Bylaws, and the Trust Agreement among ISE Holdings, U.S. Exchange Holdings, and trustees) ("U.S. Exchange Holdings Order"); and DE Holdings Order, *supra* note 11 (revising the ISE Holdings Certificate and ISE Holdings Bylaws).

[20] *See* Sections III.B. and III.C., *infra.*

[21] *See* note 13, *supra.*

[22] In particular, Art. 271 of the Swiss penal code, "Prohibited acts for a foreign state," states, in part: "Whoever, without being authorized, performs acts for a foreign state on Swiss territory that are reserved to an authority or an official, whoever performs such acts for a foreign party or another foreign organization, whoever aids and abets such acts, shall be punished with imprisonment and, in serious cases, sentenced to the penitentiary. *See* Eurex Order, *supra* note 13, at note 58 and accompanying text.

[23] *See* Eurex Order, *supra* note 13, at note 59 and accompanying text. On January 1, 2009, the SFBC, the Swiss Federal Office of Private Insurance, and the Swiss Anti-Money Laundering Control Authority merged to form the Swiss Financial Markets Authority ("FINMA"), a new consolidated financial regulator for Switzerland. The Eurex Order describes the 2007 Procedure in greater detail. *See* Eurex Order, *supra* note 13, at notes 57–60 and accompanying text.

[24] *See* Eurex Order, *supra* note 13, at note 57 and accompanying text. The 2007 Procedure was designed to ensure that the delivery of books and records to the Commission was not delayed. Therefore, under the 2007 Procedure, the Commission's requests for books and records would be sent directly to the Swiss Upstream Owners and would not be subject to filtering or substantive review by the SFBC. In addition, the SFBC agreed to pass to the Commission without delay and without substantive review materials provided by the Swiss Upstream Owners that were responsive to the Commission's requests for information. *See* Eurex Order, *supra* note 13, at note 60.

[25] *See* Eurex Order, *supra* note 13, at text accompanying note 60.

[26] *See* 2007 Swiss Resolutions 1, 3(b), 6, 7(a), 7(e), 8(a), 8(e), and 9, and Swiss Supplemental Resolution 2.

[27] *See* Bylaws of EDGX ("EDGX Bylaws") and Bylaws of EDGA ("EDGA Bylaws" and, together with the EDGX Bylaws, the "Exchange Bylaws"), Article XI, Section 4. The enumeration in the Exchange Bylaws is identical.

[28] *See also* Eurex Order, *supra* note 13, at note 66 and accompanying text. The Commission notes that if a non-U.S. Upstream Owner fails to make its books and record available to the Commission, the Commission could bring an action under, among other provisions, Section 17 of the Act, 15 U.S.C. 78q, and Rule 17a–1(b) thereunder, 17 CFR

Continued

4. Trust Agreement

In connection with the 2007 Transaction, ISE implemented a Delaware statutory Trust (the "Trust") pursuant to a Trust Agreement ("2007 Trust Agreement") among ISE Holdings, U.S. Exchange Holdings, trustees (the "Trustees"), and a Delaware trustee.[29] By its terms, the 2007 Trust Agreement related solely to ISE Holdings' ownership of ISE LLC, but not to any other national securities exchange that ISE Holdings might control, directly or indirectly. The Commission has approved a proposal [30] that revises the 2007 Trust Agreement to replace references to ISE LLC with references to any national securities exchange or facility thereof controlled, directly or indirectly, by ISE Holdings, including EDGX and EDGA (the 2007 Trust Agreement, as amended, is referred to herein as the "2009 Trust Agreement").[31] Except for the expanded scope of the 2007 Trust Agreement, the 2009 Trust Agreement is substantially similar to the 2007 Trust Agreement.

The Trust serves two general purposes. First, for as long as ISE Holdings controls, directly or indirectly, a national securities exchange, including EDGA or EDGA, the Trust would hold capital stock of ISE Holdings in the event that a person obtains an ownership or voting interest in ISE Holdings in excess of the ownership and voting limits established in the ISE Holdings Certificate of Incorporation.[32] Second, the Trust would hold capital stock of ISE Holdings in the event of a Material Compliance Event.[33] Under the 2009 Trust Agreement, a "Material Compliance Event" is any state of facts, development, event, circumstance, condition, occurrence, or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to its respective commitments under the 2007 Resolutions, as supplemented by the Supplemental Resolutions, in any material respect.[34] The Trust holds a call option over the capital stock of ISE Holdings that may be exercised if a Material Compliance Event has occurred and continues to be in effect.[35]

For the reasons discussed in the Eurex Order in connection with the 2007 Trust Agreement,[36] the Commission finds that the 2009 Trust Agreement is designed to enable EDGX and EDGA to operate in a manner that complies with the federal securities laws, including the objectives and requirements of sections 6(b) and 19(g) of the Act,[37] and to facilitate the ability of EDGX and EDGA and the Commission to fulfill their regulatory and oversight obligations under the Act.[38] In addition, the Commission notes that the 2009 Trust Agreement, like the 2007 Trust Agreement, is consistent with the provisions that other entities that directly or indirectly own or control a self-regulatory organization have instituted and that have been approved by the Commission.[39]

B. Self-Regulatory Function of the Exchanges; Relationship Between DE Holdings, the Upstream Owners, ISE Holdings, and the Exchanges; Jurisdiction Over DE Holdings, ISE Holdings, and the Upstream Owners

1. DE Holdings

Although DE Holdings itself will not itself carry out regulatory functions, its activities with respect to the operation of EDGX and EDGA must be consistent with, and not interfere with, the self-regulatory obligations of EDGX and EDGA. The DE Holdings corporate documents include certain provisions that are designed to maintain the independence of the Exchanges' self-regulatory function from DE Holdings, enable EDGX and EDGA to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act, and facilitate the ability of the Exchanges and the Commission to fulfill their regulatory and oversight obligations under the Act.[40]

For example, DE Holdings submits to the Commission's jurisdiction with respect to activities relating to EDGX and EDGA,[41] and agrees to provide the Commission and the Exchanges with access to its books and records that are related to the operation or administration of the Exchanges.[42] In addition, to the extent they are related to the operation or administration of EDGX or EDGA, the books, records, premises, officers, Managers, agents, and employees of DE Holdings shall be deemed the books, records, premises, officers, Managers, agents, and employees of EDGX or EDGA, as applicable, for purposes of, and subject to oversight pursuant to, the Act.[43] DE Holdings also agrees to keep confidential non-public information relating to the self-regulatory function [44] of the Exchanges and not to use such information for any non-regulatory purpose.[45] In addition, the Board of Managers of DE Holdings, as well as its officers, employees, and agents, are required to give due regard to the preservation of the independence of the self-regulatory function of EDGX and EDGA.[46] Further, the DE Holdings Operating Agreement requires that any changes to the DE Holdings Operating Agreement be submitted to the Boards of Directors of EDGX and EDGA, and, if such amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, such change shall not be effective until filed with, or filed with and approved by, the

240.17a–1(b), against EDGX or EDGA pursuant to Section 19(h) of the Act, 15 U.S.C. 78s(h).

[29] *See* Eurex Order, *supra* note 13, at Section II.C, for a more detailed description of the Trust.

[30] *See* U.S. Exchange Holdings Order, *supra* note 19.

[31] The term of the Trust is perpetual, provided that ISE Holdings directly or indirectly controls a national securities exchange or a facility thereof, including EDGX or EDGA. *See* 2009 Trust Agreement, Article II, Section 2.6.

[32] *See* Eurex Order, *supra* note 13, at Section II.C. If a person exceeds an ownership or voting limit, then a majority of the capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the capital stock) would automatically be transferred to the Trust. *See* ISE Holdings Certificate, Article FOURTH, Section III(c). *See also* Eurex Order, *supra* note 13, at note 37 and accompanying text.

[33] *See* Eurex Order, *supra* note 13, at Section II.C.

[34] *See* 2009 Trust Agreement, Article I, Section 1.1.

[35] *See* 2009 Trust Agreement, Article IV, Section 4.2. More specifically, if a Material Compliance Event occurs and continues to be in effect, the Trustees must take certain actions, including, after a Cure Period, the exercise of a Call Option for a transfer of the majority of capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters. *See* 2009 Trust Agreement, Article IV, Section 4.2. *See also* Eurex Order, *supra* note 13, at note 62 and accompanying text.

[36] *See* Eurex Order, *supra* note 13, at Section II.C. *See also* U.S. Exchange Holdings Order, *supra* note 19.

[37] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[38] *See* 2009 Trust Agreement, Articles V, VI, and VIII.

[39] *See, e.g.,* Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (File No. SR–NYSE–2006–120) (order relating to the combination between NYSE Group, Inc. and Euronext N.V.); and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR–NYSE–2005–77) (order relating to the business combination of the New York Stock Exchange, Inc., and Archipelago Holdings, Inc.). *See also* Eurex Order, *supra* note 13, at note 111.

[40] *See* DE Holdings Operating Agreement Article XI, Section 11.2; Article XII; and Article XIV.

[41] *See* DE Holdings Operating Agreement, Article XIV, Section 14.3.

[42] *See* DE Holdings Operating Agreement, Article XI, Section 11.2(b).

[43] *Id.*

[44] This requirement to keep confidential non-public information relating to the self-regulatory function shall not limit the Commission's ability to access and examine such information or limit the ability of any Members, Managers, officers, employees, or agents of DE Holdings to disclose such information to the Commission. *See* DE Holdings Operating Agreement, Article XI, Section 11.2(a).

[45] *Id.*

[46] *See* DE Holdings Operating Agreement, Article XIV, Section 14.1.

Commission.[47] The Commission finds that these provisions are consistent with the Act, and that they will assist EDGX and EDGA in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act.

2. Upstream Owners and ISE Holdings

Although the Upstream Owners and ISE Holdings will not carry out any regulatory functions, the activities of each of the Upstream Owners and of ISE Holdings with respect to the operation of EDGX and EDGA must be consistent with, and not interfere with, the self-regulatory obligations of EDGX and EDGA. The 2007 Resolutions, as supplemented by the Supplemental Resolutions, the ISE Holdings Bylaws, the ISE Holdings Certificate, the U.S. Exchange Holdings Certificate, and the U.S. Exchange Holdings Bylaws include certain provisions designed to maintain the independence of the self-regulatory function of EDGX and EDGA, enable EDGX and EDGA to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[48] and facilitate the ability of EDGX, EDGA, and the Commission to fulfill their regulatory and oversight obligations under the Act.

For example, the Upstream Owners and ISE Holdings provide that each such Upstream Owner, and ISE Holdings, will comply with the U.S. federal securities laws and the rules and regulations thereunder and cooperate with the Commission and EDGX and EDGA.[49] Also, each board member, officer, and employee of the Upstream Owners, and of ISE Holdings, in discharging his or her responsibilities, will comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with EDGX and EDGA.[50] In discharging his or her responsibilities as a board member of an Upstream Owner, or of ISE Holdings, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that the actions of the Upstream Owner or ISE Holdings, as applicable, would have on the ability of EDGX and EDGA to carry out their responsibilities under the Act.[51] In addition, each of the Upstream Owners and ISE Holdings, and their board members, officers, and employees, must give due regard to the preservation of the independence of the self-regulatory function of EDGX and EDGA (or in the case of the non-U.S. Upstream Owners, that they will take reasonable steps necessary to cause their officers and employees involved in the activities of EDGX and EDGA to give due regard to preserving the independence of the self-regulatory functions of EDGX and EDGA).[52]

Further, the non-U.S. Upstream Owners (along with their respective board members, officers, and employees), U.S. Exchange Holdings, and ISE Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of EDGX and EDGA, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of EDGX or EDGA and not use such information for any commercial[53] purposes.[54] In addition, books and records of the non-U.S. Upstream Owners related to the activities of EDGX and EDGA will at all times be made available for, and books and records of U.S. Exchange Holdings and ISE Holdings will be subject at all times to, inspection and copying by the Commission, EDGX, and EDGA.[55] Books and records of U.S. Exchange Holdings related to the activities of EDGX and EDGA, and the books and records of ISE Holdings, will be maintained within the United States.[56] Moreover, for so long as each of the Upstream Owners or ISE Holdings directly or indirectly controls EDGX or EDGA, the books, records, officers, directors (or equivalent), and employees of each of the Upstream Owners or of ISE Holdings will be deemed to be the books, records, officers, directors, and employees of EDGX or EDGA, as applicable.[57] Finally, for so long as U.S. Exchange Holdings or ISE Holdings directly or indirectly control EDGX or EDGA, the premises of U.S. Exchange Holdings and ISE Holdings will be deemed to be the premises of EDGX or EDGA.[58]

To the extent involved in the activities of EDGX or EDGA, each of the non-U.S. Upstream Owners, its board members, officers, and employees, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of EDGX or EDGA.[59] Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the United States, to the extent such directors, officers, or employees are involved in the activities of EDGX or EDGA, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of EDGX or EDGA.[60] Similarly, ISE Holdings and its officers, directors, employees, and agents irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, EDGX or EDGA.[61]

Finally, the 2007 Resolutions, as supplemented by the Supplemental Resolutions, the U.S. Exchange Holdings Certificate, the U.S. Exchange Holdings Bylaws, the ISE Holdings Certificate, and the ISE Holdings Bylaws each require that any change to the applicable document (including any action by the non-U.S. Upstream

[47] *See* DE Holdings Operating Agreement, Article XV, Section 15.2(b). The requirement to submit changes to the Board of an Exchange endures for as long as DE Holdings directly or indirectly controls the Exchange. *Id.*

[48] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[49] *See* Resolution 1 and Supplemental Resolution 2(a); U.S. Exchange Holdings Certificate, Article ELEVENTH; and ISE Holdings Certificate, Article THIRTEENTH.

[50] *See* Resolutions 7(a) and 8(a) and Supplemental Resolutions 2(b) and (c); U.S. Exchange Holdings Certificate, Article TENTH; and ISE Holdings Certificate, Article TENTH. The Resolutions also provide that each non-U.S. Upstream Owner will take reasonable steps necessary to cause each person who subsequently becomes a board member of the non-U.S. Upstream Owner to agree in writing to certain matters included in the Resolutions. *See* Resolution 7 and Supplemental Resolution 2(b).

[51] Resolution 7(f) and Supplemental Resolution 2(b); U.S. Exchange Holdings Certificate, Article TENTH; and ISE Holdings Certificate, Article TENTH.

[52] *See* Resolutions 5, 7(d), and 8(d) and Supplemental Resolution 2; U.S. Exchange Holdings Certificate, Article TWELFTH; and ISE Holdings Bylaws, Article I, Section 1.5.

[53] The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

[54] *See* Resolutions 6, 7(e), and 8(e), and Supplemental Resolution 2; U.S. Exchange Holdings Certificate, Article FOURTEENTH; and ISE Holdings Certificate, Article ELEVENTH.

[55] *See* Resolution 3 and Supplemental Resolution 2(a); U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Certificate, Article TWELFTH. *See* Section II.A.3, *supra,* for a discussion of the 2009 Procedure through which the Swiss Upstream Owners would make available their books and records relating to the activities of the Exchanges.

[56] *See* U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Bylaws, Article I, Section 1.3.

[57] *See* Resolutions 3 and 8(c) and Supplemental Resolutions 2(a) and (c); U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Certificate, Article TWELFTH.

[58] *See* U.S. Exchange Holdings Certificate, Article FIFTEENTH; and ISE Holdings Certificate, Article TWELFTH.

[59] *See* Resolutions 2, 7(b), and 8(b) and Supplemental Resolution 2.

[60] *See* U.S. Exchange Holdings Bylaws, Article VI, Section 16.

[61] *See* ISE Holdings Bylaws, Article I, Section 1.4.

Owners that would have the effect of changing the Supplemental Resolutions or the 2007 Resolutions) be submitted to the Boards of EDGX and EDGA.[62] If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act,[63] and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission.[64] The Commission finds that these provisions are consistent with the Act, and that they will assist EDGX and EDGA in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act.

3. Controlling Persons

Under Section 20(a) of the Act, any person with a controlling interest in EDGX or EDGA would be jointly and severally liable with and to the same extent that EDGX or EDGA is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to all entities controlling the Exchanges, including the Trust, DE Holdings, ISE Holdings, and the Upstream Owners.

C. Ownership and Voting Limitations; Changes in Control of the Exchanges

The DE Holdings Certificate includes restrictions on the ability to own and vote shares of the capital stock of DE Holdings.[65] These limitations are designed to prevent any Member of DE Holdings from exercising undue control over the operation of the Exchanges and to assure that the Exchanges and the Commission are able to carry out their regulatory obligations under the Act. Similarly, the corporate governing documents of ISE Holdings include ownership and voting limitations (respectively, the "ISE Holdings Ownership Limit" and the "ISE Holdings Voting Limit") that apply for so long as ISE Holdings controls, directly or indirectly, a national securities exchange, including EDGX or EDGA. The Resolutions and Supplemental Resolutions of the non-U.S. Upstream Owners, and the U.S. Exchange Holdings Certificate of Incorporation, include provisions requiring these entities to take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit.

1. DE Holdings

Generally, no person, other than ISE Holdings, either alone or together with its related persons,[66] may own, directly or indirectly, of record or beneficially, Units representing more than a 40% Percentage Interest in DE Holdings.[67] In addition, the DE Holdings Operating Agreement prohibits members of the EDGX or EDGA, either alone or together with their related persons, from owning, directly or indirectly, of record or beneficially, Units representing a Percentage Interest in DE Holdings of more than 20%.[68] Further, no person, other than ISE Holdings, either alone or together with its related persons, may vote or cause the voting of Units representing more than a 20% Percentage Interest in DE Holdings.[69] If any Member of DE Holdings purports to transfer Units in violation of the ownership limits, or to vote or cause the voting of Units in violation of the voting limits, DE Holdings has the right to redeem such Units for the lesser of the fair market value or the book value of the Units.[70] In addition, DE Holdings will not honor any vote that would violate the voting limitations, and any Units that would violate the voting limitation will not be entitled to vote to the extent of the violation.[71]

The DE Holdings Board may waive the 40% ownership limitation applicable to persons who are not Exchange members and the 20% voting limitation pursuant to an amendment to the DE Holdings Operating Agreement adopted by the DE Holdings Board if the DE Holdings Board makes certain findings.[72] Any such amendment will not be effective unless it is filed with and approved by the Commission.[73] However, as long as DE Holdings directly or indirectly controls an Exchange, the DE Holdings Board may not waive the ownership and voting limitations above 20% for Exchange members or their related persons.[74]

Exchange members that trade on an exchange traditionally have ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[75] A member that is a controlling shareholder of an exchange

[62] *See* Supplemental Resolution 3; U.S. Exchange Holdings Certificate, Article SIXTEENTH; U.S. Exchange Holdings Bylaws, Article VI, Section 9; ISE Holdings Certificate, Article FOURTEENTH; and ISE Holdings Bylaws, Article X, Section10.1.

[63] 15 U.S.C. 78s.

[64] *See* Supplemental Resolution 3; U.S. Exchange Holdings Certificate, Article SIXTEENTH; U.S. Exchange Holdings Bylaws, Article VI, Section 9; ISE Holdings Certificate, Article FOURTEENTH; and ISE Holdings Bylaws, Article X, Section10.1. The requirement to submit changes to the Board of an Exchange endures for as long as the Upstream Owners or ISE Holdings directly or indirectly control the Exchange. *Id.*

[65] These provisions are consistent with ownership and voting limits approved by the Commission for other self-regulatory organizations. *See e.g.,* Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.) ("BATS Exchange Order"); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR–NSX–2006–03) ("NSX Demutualization Order"); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (File No. SR–CHX–2004–26) ("CHX Demutualization Order"); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (File No. SR–Phlx–2003–73) ("Phlx Demutualization Order").

[66] *See* DE Holdings Operating Agreement, Article I, Section 1.1.

[67] *See* DE Holdings Operating Agreement, Article XII, Section 12.1(a). A Percentage Interest is the ratio of the number of Units held to the total of all of the issued and outstanding Units, expressed as a percentage. *See* DE Holdings Operating Agreement, Article I, Section 1.1. The ownership and voting limitations in Article XII, Section 12.1(a) of the DE Holdings Operating Agreement will not apply to ISE Holdings for as long as ISE LLC is a wholly-owned subsidiary of ISE Holdings and ISE Holdings is subject to ownership and voting limitations comparable to those set forth in Article XII, Section 12.1(a). *See* DE Holdings Operating Agreement, Article XII, Section 12.1(a)(3). The comparable ownership and voting limitations for ISE Holdings are included in Article FOURTH, Section III of the ISE Holdings Certificate. *See also* notes 89–91, *infra,* and accompanying text.

[68] *See* DE Holdings Operating Agreement, Article XII, Section 12.1(a)(2).

[69] *See* DE Holdings Operating Agreement, Article XII, Section 12.1(a)(3).

[70] *See* DE Holdings Operating Agreement, Article XII, Section 12.3.

[71] *See* DE Holdings Operating Agreement, Article XII, Section 12.4.

[72] *See* DE Holdings Operating Agreement, Article XII, Section 12.1(b).

[73] *Id.*

[74] These provisions are consistent with waiver of ownership and voting limits approved by the Commission for other SROs. *See e.g.,* BATS Exchange Order, NSX Demutualization Order, and CHX Demutualization Order, *supra* note 65; and Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (File No. SR–PCX–2004–08).

[75] *See, e.g.,* Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) ("Nasdaq Exchange Order"); and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) ("NYSE/Archipelago Merger Approval Order").

might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

In addition, as proposed, the Exchanges will be wholly-owned subsidiaries of DE Holdings. The Amended and Restated Bylaws of EDGX and EDGA (together, the "Exchanges Amended and Restated Bylaws") identify this ownership structure.[76] Any changes to the Exchanges Amended and Restated Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of the Exchanges, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[77]

The Commission believes that these provisions are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act.

In its comment letter, Nasdaq raises questions relating to the ownership and control of EDGX and EDGA, in particular, and of national securities exchanges in general. In this regard, Nasdaq urges the Commission to re-examine the voting and ownership limits applicable to owners of national securities exchanges and to adopt consistent rules that would apply to all national securities exchanges and alternative trading systems.[78] In addition, Nasdaq asks the Commission to consider the possibility that multiple owners, each holding a 20% ownership interest, could have common interests that cause them to act in concert on a consistent basis.[79] In the case of EDGX and EDGA, Nasdaq believes that "the bias inherent in concentrated dealer control" could affect the operation of the Exchanges and of their Member/owners, thereby requiring the Commission to review all proposed rule changes of the Exchanges for possible bias.[80]

As discussed above,[81] the DE Holdings Operating Agreement includes restrictions on the ability to own and vote Units in DE Holdings. The Commission believes that these limitations, which are consistent with the ownership and voting limits that the Commission has approved for other SROs,[82] are reasonably designed to prevent any member of DE Holdings, including the Member/owners, from exercising undue control over the operation of the Exchanges. In addition, the Commission believes that the composition of the Exchanges' Boards of Directors, which must at all times include a majority of Independent Directors, could help to counteract the influence of the Exchanges' Member/owners.[83] With respect to Nasdaq's concern regarding the need to scrutinize proposed rule changes of EDGX and EDGA for possible bias in favor of the Exchanges' Member/owners, the Commission notes that that it will review proposed rule changes by the Exchanges, as it reviews the proposed rule changes of all other national securities exchanges, to evaluate whether the proposed rules are consistent with Act, in general, and, in particular, with the requirements of Section 6(b)(5) of the Act.[84]

Nasdaq also expresses concern regarding potential unfair advantages resulting from exchanges of information between the Exchanges and their Member/owners.[85] In particular, Nasdaq questions how the Exchanges will implement the provisions of Exchange Rules 2.10 and 2.11[86] and Exchange Amended and Restated Bylaws Article XI which, among other things, restrict the flow of confidential information between the Exchanges and other persons, in light of the potential presence of representatives of each of the controlling owners on the Exchange Boards. The Commission notes that Exchange Rules 2.10 and 2.11 are comparable to rules adopted by other national securities exchanges[87] and that Article XI, Section 3 of the Exchange Amended and Restated Bylaws is comparable to bylaw provisions adopted by other national securities exchanges.[88] The Commission notes that each Exchange, like all national securities exchanges, has the obligation under Section 6(b)(1) of the Act to comply with its rules and to enforce compliance by Exchange Members with, among other things, the rules of the Exchange and the federal securities laws. Accordingly, if either Exchange learns of a failure to maintain the confidentiality of information pertaining to its self-regulatory function, as required by the Exchanges Amended and Restated Bylaws and the DE Holdings Operating Agreement, such Exchange would be required to take appropriate action to address the failure to comply with the applicable requirements of its governing documents. In addition, the Commission also monitors national securities exchanges with respect to their members' compliance with the rules of the exchange.

2. ISE Holdings and the Upstream Owners

(a) ISE Holdings

The governing documents of ISE Holdings also include ownership and voting limitations that apply for so long as ISE Holdings controls, directly or indirectly, a national securities exchange (a "Controlled National Securities Exchange"), or facility thereof, including EDGX or EDGA. In particular, the ISE Holdings Certificate provides that, for so long as ISE Holdings controls, directly or indirectly, a Controlled National Securities exchange, no person, either alone or together with its related persons, may own, directly or indirectly, of record or beneficially, more than 40% (or 20% if the person is a member of an exchange controlled by ISE Holdings) of the capital stock of ISE Holdings that has the right by its terms to vote in the election of the Board of Directors of ISE Holdings ("ISE Holdings Board") or on other matters (other than matters affecting the rights, preferences, or

[76] *See* Exchanges Amended and Restated Bylaws Article I(jj). The enumeration in the Amended and Restated Bylaws of EDGX and EDGA is identical.

[77] *See* 15 U.S.C. 78s.

[78] *See* Nasdaq Letter, *supra* note 4, at 3. Credit Suisse, however, believes that Commission rules governing the ownership structure of alternative trading systems are unnecessary and would be inconsistent with the goals of Regulation ATS. *See* Credit Suisse Letter, *supra* note 4. The Commission does not believe that the consideration of the Exchanges' applications for exchange registration are the appropriate forum for considering this issue.

[79] *Id.* at 4. In this regard, Nasdaq notes that three broker-dealers each hold a 19.9% ownership interest in DE Holdings. *See* Nasdaq Letter, *supra* note 4, at 2.

[80] *See* Nasdaq Letter, *supra* note 4, at 4.

[81] *See* notes 65–77, *supra,* and accompanying text.

[82] *See* note 65, *supra.*

[83] *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(b). The composition of the Exchanges' Boards is discussed in greater detail in Section II.D.1., *infra.*

[84] 15 U.S.C. 78f(b)(5).

[85] *See* Nasdaq Letter, *supra* note 4, at 5.

[86] Exchange Rule 2.10, "Affiliation between Exchange and a Member," generally prohibits an Exchange from acquiring an ownership interest in a Member, and a Member from becoming an affiliate of the Exchange, without prior Commission approval. Exchange Rule 2.10 allows an Exchange Member to be a Director of the Exchange or of DE Holdings. In addition, Exchange Rule 2.10 allows each Exchange to be an affiliate of DECN. Exchange Rule 2.11, "Direct Edge ECN LLC as Outbound Router," addresses DECN's function as the outbound router for the Exchanges. Exchange Rules 2.10 and 2.11 are discussed in greater detail in Section III.G, *infra.*

[87] *See, e.g.,* BATS Rules 2.10 and 2.11; and NSX Rules 2.10 and 2.11. Exchange Rules 2.10 and 2.11 are discussed in greater detail in Section III.G, *infra.*

[88] See, *e.g.,* Article XI, Section 3 of the Amended and Restated Bylaws of BATS Exchange, Inc.

privileges of the capital stock) ("ISE Holdings Ownership Limit").[89] In addition, for so long as ISE Holdings controls, directly or indirectly, a Controlled National Securities Exchange, no person, either alone or together with its related persons, may, directly or indirectly, vote or cause the voting of more than 20% of the ISE Holdings capital stock that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the capital stock) ("ISE Holdings Voting Limit").[90]

Article XI of the ISE Holdings Bylaws, which originally was adopted in connection with the Eurex Transaction, waives the ISE Holdings Ownership Limits and the ISE Holdings Voting Limits to allow the Upstream Owners to own and vote all of the common stock of ISE Holdings.[91] Article XI, Section 11.1(b) states that, in waiving the ISE Holdings Ownership Limits and the ISE Holdings Voting Limits to permit the Upstream Owners to own and vote the capital stock of ISE Holdings, the ISE Holdings Board has determined, with respect to each Upstream Owner, that: (i) Such waiver will not impair the ability of ISE Holdings and each Controlled National Securities Exchange to carry our their respective functions and responsibilities under the Act; (ii) such waiver is in the best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange; (iii) such waiver will not impair the ability of the Commission to enforce the Act; (iv) neither the Upstream Owner nor any of its related persons is subject to a statutory disqualification (within the meaning of Section 3(a)(39) of the Act); and (v) neither the Upstream Owner nor any of its related persons is a member of such Controlled National Securities Exchange.

Because Article XI, Section 11.1(b) requires the ISE Holdings Board, in waiving the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit, to have determined, with respect to each Upstream Owner, that, among other things, such waiver will not impair the ability of EDGX and EDGA to carry out their functions and responsibilities under the Act, or impair the Commission's ability to enforce the Act, the Commission believes that the Upstream Owners' exercise of ownership and voting control of ISE Holdings will not impair the ability of the Commission or of EDGX and EDGA to discharge their respective responsibilities under the Act.

(b) Upstream Owners

To facilitate compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit, the Resolutions of the non-U.S. Upstream Owners, as supplemented by the Supplemental Resolutions, provide that each such owner will take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit.[92] Likewise, the U.S. Exchange Holdings Certificate provides that, for so long as U.S. Exchange Holdings directly or indirectly controls a national securities exchange, including EDGX or EDGA, U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit.[93] The Commission believes that these provisions in the Resolutions, as supplemented by the Supplemental Resolutions, and in the U.S. Exchange Holdings Certificate should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or EDGX or EDGA to effectively carry out their regulatory responsibilities under the Act.

D. EDGX and EDGA

EDGX and EDGA each have applied to the Commission to register as a national securities exchange. As part of their exchange applications, EDGX and EDGA have filed their Certificates of Incorporation (together, the "Exchange Certificates") and the Exchanges Amended and Restated Bylaws.[94] In these documents, among other things, the Exchanges establish the composition of their respective Boards of Directors (each, an "Exchange Board," and, together, the "Exchange Boards") and the committees of the Exchanges.

1. Exchange Boards

Each Exchange Board will be the governing body of its Exchange and will possess all of the powers necessary for the management of the business and affairs of the Exchange and the execution of the Exchange's responsibilities as a self-regulatory organization ("SRO"). Under the Exchanges Amended and Restated Bylaws, each Exchange Board initially will be composed of 19 Directors, including:[95]

- The Chief Executive Officer ("CEO") of EDGX or EDGA, as applicable;[96]
- Four Owner Directors;[97]
- Ten Independent Directors;[98] and
- Four Exchange Member Directors.[99]

In addition, at all times, at least 20% of the Directors of each Exchange Board will be Exchange Member Directors and the majority of the Directors of each Exchange Board will be Independent Directors.[100]

[89] *See* ISE Holdings Certificate, Article FOURTH, Section III.

[90] *Id.* If a person exceeds an ISE Holdings Ownership or ISE Holdings Voting Limit, a majority of the capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters (other than matters affecting the rights, preferences or privileges of the capital stock) would automatically be transferred to the Trust. *See* ISE Holdings Certificate, Article FOURTH, Section III(c). *See also* Eurex Order, *supra* note 13, at note 36 and at notes 70–114 and accompanying text.

[91] The ISE Holdings Certificate allows the ISE Holdings Board to waive the ISE Holdings Ownership Limit and the ISE Holdings Voting Limit pursuant to an amendment to the ISE Holdings Bylaws, provided that the ISE Holdings Board makes certain determinations. *See* ISE Holdings Certificate, Article FOURTH, Sections III(a)(i)(A) III(a)(i)(B) and III(b)(i). Article XI of the ISE Holdings Bylaws was adopted in connection with the Eurex Transaction, when ISE LLC was the sole national securities exchange controlled by ISE Holdings. *See* Eurex Order, *supra* note 13. Article XI, Section 11.1(b) was subsequently amended to apply to any Controlled National Securities Exchange. *See* DE Holdings Order, *supra* note 11.

[92] *See* Resolution 4 and Supplemental Resolution 2(a).

[93] *See* U.S. Exchange Holdings Certificate, Article THIRTEENTH.

[94] The enumeration in the EDGX Certificate and the EDGX Amended and Restated Bylaws are the same as the enumeration in the EDGA Certificate and the EDGA Amended and Restated Bylaws, respectively.

[95] *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(a). An Exchange Board may add or remove Director positions, provided that, among other things, the number of Directors positions will not be fewer than seven nor more than 25. *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(b).

[96] *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(i).

[97] *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(ii). The Designating Owners of DE Holdings (*i.e.,* Members of DE Holdings that hold at least a 15% Percentage Interest in DE Holdings) select the Owner Directors. *See* Exchanges Amended and Restated Bylaws, Articles I(k) and III, Section 2(b).

[98] *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(iii). An Independent Director is a Director who has no material relationship with (i) the Exchange or any Affiliate of the Exchange, or (ii) any Exchange Member or Affiliate of any Exchange Member; *provided,* however, that an individual who otherwise qualifies as an Independent Director will not be disqualified from serving in such capacity solely because such Director is a Director of the Exchange, DE Holdings, or, the case of EDGA, a Director of EDGX and, in the case of EDGX, a Director of EDGA. *See* Exchanges Amended and Restated Bylaws, Article I(u).

[99] *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(a)(iv). An Exchange Member Director is an officer, director, employee or agent of an Exchange Member who is elected in accordance with the procedures set forth in Article III, Section 4 of the Exchanges Amended and Restated Bylaws. *See* Exchanges Amended and Restated Bylaws, Article I(q).

[100] *See* Exchanges Amended and Restated Bylaws, Article III, Section 2(b).

Following approval of the Form 1 Applications, DE Holdings, as the sole owner of the common stock of the Exchanges, will elect Directors in accordance with the Exchange Certificates and the Exchanges Amended and Restated Bylaws.[101] The first annual meeting of the stockholders of each Exchange will be held prior to the Exchanges' commencement of operations as national securities exchanges.[102] At the first annual stockholders' meeting, the stockholders will elect Directors of the Exchanges pursuant to the Exchange Certificates and the Exchanges Amended and Restated Bylaws. Therefore, prior to commencing operations as national securities exchanges, the Members of the Exchanges will have the opportunity to participate in the selection of Exchange Member Directors.[103]

DE Holdings will appoint the initial Nominating Committee[104] and the Exchange Member Nominating Committee[105] for each Exchange, which will serve until the first annual meeting of stockholders.[106] Each of the Nominating Committee and the Exchange Member Nominating Committee, after completion of its respective duties for nominating directors for election to the Board of EDGX or EDGA, as applicable, for that year, will nominate candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable.[107] Additional candidates for the Member Nominating Committee may be nominated and elected by each Exchange's Members pursuant to a petition process.[108]

Each Exchange's Nominating Committee will nominate candidates for each director position (other than Owner Directors, Exchange Member Directors, and the director position filled by the CEO), and DE Holdings, as the sole shareholder, will elect those directors. Each Exchange's Member Nominating Committee will nominate candidates for each Exchange Member Director on the Exchange Board.[109] Members of EDGX and EDGA may nominate additional candidates for the Exchange Member Director positions pursuant to a petition process.[110] If no candidates are nominated pursuant to a petition process, then each Exchange's Nominating Committee will nominate the initial nominees of the Member Nominating Committee as Exchange Member Directors.[111] If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by each Exchange's Member Nominating Committee, will be presented to Exchange Members for election to determine the final nomination of Exchange Member Directors.[112] Each Exchange's Nominating Committee will nominate the candidates who receive the most votes as Exchange Member Directors.[113] DE Holdings, as the sole shareholder, will elect those candidates nominated by each Exchange's Nominating Committee as Exchange Member Directors.[114]

The Commission believes that the requirement in the Exchanges Amended and Restated By-Laws that 20% of the directors be Exchange Member Directors and the means by which they are chosen by Members provides for the fair representation of members in the selection of directors and the administration of the Exchanges consistent with the requirement in Section 6(b)(3) of the Act.[115] As the Commission has previously noted, this requirement helps to ensure that members have a voice in the use of self-regulatory authority, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.[116]

The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[117] Further, public, non-industry representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the Exchange Boards to address issues in a non-discriminatory fashion and foster the integrity of the Exchanges.[118] The Commission believes that the composition of the Exchange Boards satisfy the requirements in Section 6(b)(3) of the Act,[119] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.[120]

2. Exchange Committees

In the Exchanges Amended and Restated Bylaws, the Exchanges have proposed to establish several committees. Specifically, each Exchange has proposed to establish the following committees whose members the Exchange Boards, after consultation with the Chairman, may designate: a Compensation Committee;[121] an Audit

[101] *See* Form 1 Applications, Exhibit J, Response 2.

[102] *See* Exchanges Amended and Restated Bylaws, Article IV, Section 1(b).

[103] *See* Exchanges Amended and Restated Bylaws, Article III, Sections 2 and 4.

[104] The Nominating Committee will consist solely of three Independent Directors. *See* Exchanges Amended and Restated Bylaws, Article VI, Section 2. Because the Exchanges Amended and Restated Bylaws are substantially the same, the discussion of the Exchanges' committees applies to both Exchanges.

[105] Each member of the Exchange Member Nominating Committee will qualify as an Exchange Member Director, although the committee member is not required to be a Director. *See* Exchanges Amended and Restated Bylaws, Article VI, Section 3. An Exchange Member Director is an officer, director, employee, or agent of an Exchange Member, other than an Exchange Member that maintains an ownership interest in DE Holdings, who is elected as a Director in accordance with Article III, Section 4 of the Exchanges Amended and Restated Bylaws. *See* Exchanges Amended and Restated Bylaws, Article I(q) and (z).

[106] *See* Exchanges Amended and Restated Bylaws, Article VI, Section 1.

[107] *Id.*

[108] *Id.*

[109] The Exchange Member Nominating Committee will solicit comments from Exchange members for the purpose of approving and submitting names of candidates for election to the position of Exchange Member Director. *See* Exchanges Amended and Restated Bylaws, Article III, Section 4.

[110] *See* Exchanges Amended and Restated Bylaws, Article III, Section 4(c). The petition must be signed by Exchange Member Representatives representing 10% or more of the Exchange members. No Exchange member, together with its Affiliates, may account for more than 50% of the signatures endorsing a particular candidate. *Id.*

[111] *See* Exchanges Amended and Restated Bylaws, Article III, Section 4(e).

[112] *See* Exchanges Amended and Restated Bylaws, Article III, Section 4(e) and (f). Each Exchange Member will have the right to cast one vote for each available Exchange Member Director nomination, provided that any such vote must be cast for a person on the List of Candidates, and no Exchange Member, together with its Affiliates, may account for more than 20% of the votes cast for a candidate. *See* Exchanges Amended and Restated Bylaws, Article III, Section 4(f).

[113] *See* Exchanges Amended and Restated Bylaws, Article III, Section 4(f).

[114] *Id.*

[115] 15 U.S.C. 78f(b)(3).

[116] *See, e.g.,* Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, *supra* note 75, and BATS Exchange Order, *supra* note 65.

[117] *See, e.g.,* Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

[118] *See* Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, *supra* note 75, and BATS Exchange Order, *supra* note 65.

[119] 15 U.S.C. 78f(b)(3).

[120] *See* Form 1 Applications, Exhibit J, Response 2 (stating that at least one Independent Director will be a public non-industry representative not associated with a member of the Exchange or with a broker or dealer, as required by Section 6(b)(3) of the Act).

[121] The Compensation Committee will consist of three Independent Directors. *See* Exchanges

Continued

Committee; [122] an Executive Committee; [123] a Regulatory Oversight Committee; and an Appeals Committee.[124] In addition, each Exchange has proposed to establish a Nominating Committee [125] and a Member Nominating Committee, which will be elected on an annual basis by a vote of the stockholders.[126] For the reasons discussed above, the Commission believes that the Exchanges' proposed committees should enable the Exchanges to carry out their responsibilities under the Act and are consistent with the Act.

E. Regulation of EDGX and EDGA

As a prerequisite for the Commission's approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.[127] Among other requirements, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and the rules of the exchange.[128]

1. Membership

Membership on the Exchanges will be open to any registered broker or dealer that is a member of another registered national securities exchange or association, or any natural person associated with such a registered broker or dealer.[129] To be eligible for membership in the Exchanges, a person must be, and remain, a member of another registered national securities exchange or association.[130]

For a temporary 90-day period after approval of the Exchanges' Form 1 Applications, an applicant that is an active member of another registered national securities exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA") and is a current or former subscriber to DECN will be able to apply through an expedited process to become a member of one or both Exchanges, and to register with the Exchange(s) all of its associated persons whose registrations are active at the time the Exchanges are approved as national securities exchanges, by submitting waive-in application forms, including membership agreements.[131] EDGX or EDGA may request additional documentation in addition to the waive-in application form in order to determine whether a waive-in applicant meets the Exchange's qualification standards.[132] All of the firm's associated persons who are registered in categories recognized by Exchange rules would become registered persons of an Exchange member firm.[133]

All other applicants (and after the 90-day period has ended, those that could have waived in through the expedited process) may apply for membership in one or both Exchanges by submitting a full membership application to the Exchange(s).[134] Applications for association with an Exchange Member shall be submitted to the Exchange(s) on Form U–4 and such other forms as the Exchanges may prescribe.[135]

Each Exchange will receive and review all applications for membership in the Exchange. If an Exchange is satisfied that the applicant is qualified for membership, the Exchange will promptly notify the applicant, in writing, of such determination, and the applicant will be a member of the Exchange.[136] If an Exchange is not satisfied that the applicant is qualified for membership, the Exchange shall promptly notify the applicant of the grounds for denial.[137] Once an applicant is a member of an Exchange, it must continue to possess all the qualifications set forth in the Exchange's rules. When an Exchange has reason to believe that an Exchange member or associated person of a member fails to meet such qualifications, the Exchange may suspend or revoke such person's membership or association.[138]

Appeal of a staff denial, suspension, or termination of membership will be heard by the Appeals Committee of EDGX or EDGA, as applicable.[139] Decisions of the Appeals Committee will be made in writing and will be sent to the parties to the proceeding.[140] The decisions of the Appeals Committee will be subject to review by the applicable Exchange Board, on its own motion, or upon written request by the aggrieved party or by the Chief Regulatory Officer ("CRO").[141] The Exchange Board will have sole discretion to grant or deny the request.[142] The Exchange Board will conduct the review of the Appeals Committee's decision and may affirm, reverse, or modify the Appeals Committee's decision.[143] An Exchange Board's decision is final.[144]

The Commission finds that the membership rules of EDGX and EDGA [145] are consistent with section 6 of the Act,[146] specifically section 6(b)(2) of the Act,[147] which requires that a national securities exchange have rules that provide that any registered broker or dealer or natural person associated with such broker or dealer may become a member and any person may become associated with an exchange member. The Commission notes that pursuant to section 6(c) of the Act, an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As registered exchanges, the Exchanges must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.[148]

Amended and Restated Bylaws, Article V, Section 5(a).

[122] The Audit Committee, which will have at least three members, will consist solely of Directors, including a majority of Independent Directors, and an Independent Director will serve as Chairman of the Audit Committee. *See* Exchanges Amended and Restated Bylaws, Article V, Sections 2(a) and 5(b).

[123] The Regulatory Oversight Committee will have at least three members and will consist solely of Independent Directors. *See* Exchanges Amended and Restated Bylaws, Article V, Sections 2(a) and 5(c).

[124] The Appeals Committee will consist of two Independent Directors and one Exchange Member Director. *See* Exchanges Amended and Restated Bylaws, Article V, Section 5(d).

[125] *See* Exchanges Amended and Restated Bylaws, Article VI, Sections 1 and 2, and Section II.D.1., *supra.*

[126] *See* Exchanges Amended and Restated Bylaws, Article VI, Sections 1 and 3, and Section II.D.1., *supra.*

[127] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[128] *Id. See also* Section 19(g) of the Act, 15 U.S.C. 78s(g).

[129] *See* Exchange Rules 2.3(a) and 2.5(a)(4).

[130] *Id.*

[131] *See* Exchange Rule 2.4. The BATS Exchange also provided a waive-in application process. *See* BATS Rule 2.4.

[132] *Id.*

[133] *Id.*

[134] *See* Exchange Rule 2.6.

[135] *See* Exchange Rule 2.6(b).

[136] *See* Exchange Rule 2.6(c).

[137] *See* Exchange Rule 2.6(d).

[138] *See* Exchange Rule 2.7; *see also* Exchange Rules Chapters VII and VIII.

[139] *See* Exchange Rule 10.3; *see also* Exchanges Amended and Restated Bylaws Article V, Section 5(d).

[140] *See* Exchange Rule 10.4(d).

[141] *See* Exchange Rule 10.5(a).

[142] *Id.*

[143] *See* Exchange Rule 10.5(b).

[144] *Id.* Membership decisions are subject to review by the Commission. *See* Exchange Rule 10.7 and Section 19(d) of the Act, 15 U.S.C. 78s(d).

[145] In its comment letter, Nasdaq states that EDGX and EDGA should be required to amend their rules governing the registration of associated persons of members to address certain deficiencies. *See* Nasdaq Letter, *supra* note 4, at 7. EDGX and EDGA have revised their member registration rules accordingly. See Exchange Rule 2.3 and Amendment No. 2.

[146] 15 U.S.C. 78f.

[147] 15 U.S.C. 78f(b)(2).

[148] *See* Nasdaq Exchange Registration Order, *supra* note 75.

2. Regulatory Independence

Each Exchange has proposed several measures to help ensure the independence of its regulatory function from its market operations and other commercial interests. The regulatory operations of each Exchange will be supervised by the Exchange's CRO and monitored by its Regulatory Oversight Committee.[149] The Regulatory Oversight Committees of each Exchange will consist of three members, each of whom must be an Independent Director.[150] Each Exchange's Regulatory Oversight Committee will be responsible for monitoring the adequacy and effectiveness of the Exchange's regulatory program, assessing the Exchange's regulatory performance, and assisting the Exchange Board in reviewing the Exchange's regulatory plan and the overall effectiveness of the Exchange's regulatory functions.[151] Each Exchange's Regulatory Oversight Committee also will meet with the Exchange's CRO in executive session at regularly scheduled meetings and at any time upon request of the CRO or any member of the Regulatory Oversight Committee.[152]

Each Exchange proposes that its CRO have general supervision of the regulatory operations of the Exchange, including overseeing surveillance, examination, and enforcement functions.[153] The CRO also will administer any regulatory services agreement with another SRO to which the Exchange is a party.[154] The CRO of each Exchange will be an Executive Vice President or Senior Vice President of the Exchange, and also may serve as the Exchange's General Counsel.[155]

In addition, each Exchange has taken steps designed to provide sufficient funding for the Exchange to carry out its responsibilities under the Act. Specifically, each Exchange has represented that: (1) DE Holdings will allocate sufficient operational assets and make a capital contribution to the Exchange's capital account prior to the launch of the Exchange; (2) such an allocation and contribution will be adequate to operate the Exchange, including the regulation of the Exchange; and (3) there will be an explicit agreement between the Exchange and DE Holdings that requires DE Holdings to provide adequate funding for each Exchange's operations, including the regulation of the Exchange.[156] In addition, the Amended and Restated Bylaws of each Exchange provides that revenues received by the Exchange from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes or distributed to the stockholders, but rather, will be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or will be used to pay restitution and disgorgement of funds intended for customers.[157]

3. Regulatory Contracts

Although the Exchanges will be SROs with all of the attendant regulatory obligations under the Act, EDGX and EDGA each have stated that they entered into a regulatory contract with FINRA and a regulatory contract with ISE LLC (each, a "Regulatory Contract," and, together, the "Regulatory Contracts"), under which FINRA and ISE will perform certain regulatory functions on behalf of EDGX and EDGA.[158] Specifically, each Exchange states that FINRA will assist Exchange staff on registration issues on an as-needed basis, investigate potential violations of each Exchange's rules or federal securities laws related to activity on the Exchange, conduct examinations related to market conduct on the Exchange by Members, assist the Exchanges with disciplinary proceedings pursuant to each Exchange's rules, including issuing charges and conducting hearings, and provide dispute resolution services to Exchange Members on behalf of the Exchanges, including operation of each Exchange's arbitration program. Each Exchange also represents that FINRA will provide the Exchange with access to FINRA's WebCRD system, and will assist with programming Exchange-specific functionality relating to such system.[159] With respect to the Regulatory Contracts with ISE, each Exchange states that ISE will perform surveillance including, but not limited to, reviews respecting trading through protected quotes, locked and crossed markets, manipulation, wash trades, marking the close, customer complaints, frontrunning, trading ahead of customer orders, and anti-spoofing.[160] Notwithstanding the Regulatory Contracts, each Exchange acknowledges it will retain ultimate legal responsibility for the regulation of its members and its market.[161]

The Commission believes that it is consistent with the Act to allow the Exchanges to contract with FINRA and ISE to perform examination, enforcement, and disciplinary functions.[162] These functions are fundamental elements to a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA and ISE have the expertise and experience to perform these functions on behalf of the Exchanges.[163]

At the same time, each Exchange, unless relieved by the Commission of its responsibility,[164] bears the ultimate responsibility for self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf. In performing these regulatory functions, however, the SROs retained to perform regulatory functions may nonetheless bear liability for causing or aiding and abetting the failure of EDGX or EDGA to perform its

[149] *See* Exchanges Amended and Restated Bylaws, Article V, Section 5(c).

[150] *See* Exchanges Amended and Restated By-Laws Articles I(u) and V, Sections 2(a) and 5(c).

[151] *See* Exchanges Amended and Restated By-Laws Article V, Section 5(c).

[152] *See* Exchanges Amended and Restated By-Laws Article VII, Section 9.

[153] *Id.*

[154] *Id.*

[155] *Id. See* Nasdaq Exchange Registration Order, *supra* note 75.

[156] *See* Amendment No. 2, *supra* note 5.

[157] *See* Exchanges Amended and Restated Bylaws Article X, Section 4.

[158] *See* Exchange Rule 13.7; *see also* Amendment No. 2. Pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations thereunder, 17 CFR 200.83, the Exchanges have requested confidential treatment for the Regulatory Contracts.

[159] *See* Amendment No. 2, *supra* note 5.

[160] Each Exchange also states that ISE surveillance will work closely with the market operations and legal/compliance groups of the Exchange, when needed, to perform error trade reviews. *See* Amendment No. 2, *supra* note 5.

[161] *See* Exchange Rule 13.7 and Amendment No. 2, *supra* note 5.

[162] *See, e.g.,* Regulation ATS Release, *supra* note 117. *See also* Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR–Amex-2004–32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) ("Amex Regulatory Services Approval Order"); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004) ("NOM Approval Order"); Nasdaq Exchange Registration Order, *supra* note 75; and BATS Exchange Order, *supra* note 65.

[163] *See, e.g.,* Amex Regulatory Services Approval Order, *supra* note 162; NOM Approval Order, *supra* note 162; and Nasdaq Exchange Registration Order, *supra* note 75. The Commission notes that the Regulatory Contracts are not before the Commission and, therefore, the Commission is not acting on them.

[164] *See* Section 17(d)(1) of the Act and Rule 17d–2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members. *See also* Section III.E.4, *infra.*

regulatory functions.[165] Accordingly, although FINRA and ISE will not act on their own behalf under their SRO responsibilities in carrying out these regulatory services for the Exchanges, as SROs retain to perform regulatory functions, they may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by EDGX or EDGA.[166]

Because the exhibits to the Regulatory Contacts, including the Exchange and Commission rules covered by the Regulatory Contracts, have not yet been finalized, the Commission is conditioning the operation of EDGX and EDGA as exchanges on the finalization of the provisions in the Regulatory Contracts that will specify the Exchange and Commission rules for which FINRA and ISE will provide regulatory functions.[167]

4. 17d–2 Agreement

Section 19(g)(1) of the Act [168] requires every SRO to examine its members and persons associated with its members and to enforce compliance with the federal securities laws and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) of the Act.[169] Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to members of more than one SRO ("common members").[170] Rule 17d–2 of the Act permits SROs to propose joint plans allocating regulatory responsibilities concerning common members.[171] These agreements, which must be filed with and approved by the Commission, generally cover such regulatory functions as personnel registration, branch office examinations, and sales practices. Commission approval of a Rule 17d–2 plan relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.[172] Many existing SROs have entered into such agreements.[173]

EDGX and EDGA each have represented to the Commission that each Exchange and FINRA intend to file Rule 17d–2 agreements with the Commission covering common members of EDGX or EDGA, as applicable, and FINRA. These agreements would allocate to FINRA regulatory responsibility, with respect to common members, for the following:

- FINRA will examine common members of EDGX or EDGA, as applicable, and FINRA for compliance with federal securities laws, rules and regulations, and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.
- FINRA will investigate common members of EDGX or EDGA, as applicable, and FINRA for violations of federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule.
- FINRA will enforce compliance by common members with the federal securities laws, rules and regulations, and the rules of EDGX or EDGA, as applicable, that the Exchange has certified as identical or substantially similar to FINRA rules.

Because EDGX and EDGA anticipate entering into this Rule 17d–2 agreement, they have not made provision to fulfill the regulatory obligations that would be undertaken by FINRA under these agreements with respect to common members of EDGX or EDGA, as applicable, and FINRA.[174] Accordingly, the Commission is conditioning the operation of the Exchanges on approval by the Commission of the Rule 17d–2 agreements between each Exchange and FINRA that allocate the above specified matters to FINRA.[175]

5. Discipline and Oversight of Members

As noted above, as a prerequisite for Commission approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act. Among other requirements, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and the rules of the exchange.[176] As noted above, pursuant to the Regulatory Contracts, FINRA will perform many of the initial disciplinary processes on behalf of the Exchanges.[177] For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to the rules of the Exchanges. Appeals from disciplinary decisions will be heard by each Exchange's Appeals Committee,[178] and the Appeals Committee's decision shall be final. In addition, each Exchange Board may on its own initiative order review of a disciplinary decision.[179]

The Exchanges Amended and Restated Bylaws and the Exchanges' rules provide that each Exchange has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws.[180] Each Exchange's rules also permit it to sanction members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member, or any other fitting sanction.[181] Each Exchange's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.[182] Accordingly, as a condition to the operation of the Exchanges, a Minor Rule Violation Plan ("MRVP") filed by each Exchange under

[165] For example, if failings by the SRO retained to perform regulatory functions have the effect of leaving an Exchange in violation of any aspect of the Exchange's self-regulatory obligations, the Exchange would bear direct liability for the violation, while the SRO retained to perform regulatory functions may bear liability for causing or aiding and abetting the violation. *See, e.g.,* Nasdaq Exchange Registration Order, *supra* note 75; BATS Exchange Order, *supra* note 65; and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (order approving the International Securities Exchange LLC's application for registration as a national securities exchange).

[166] *Id.*

[167] Alternatively, the Exchanges could demonstrate that they have the ability to fulfill their regulatory obligations.

[168] 15 U.S.C. 78s(g)(1).

[169] 15 U.S.C. 78q(d).

[170] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) ("Rule 17d–2 Adopting Release").

[171] 17 CFR 240.17d–2.

[172] *See* Rule 17d–2 Adopting Release, *supra* note 170.

[173] *See, e.g.,* Securities Exchange Act Release Nos. 13326 (March 3, 1977), 42 FR 13878 (March 14, 1977) (NYSE/Amex); 13536 (May 12, 1977), 42 FR 26264 (May 23, 1977) (NYSE/BSE); 14152 (November 9, 1977), 42 FR 59339 (November 16, 1977) (NYSE/CSE); 13535 (May 12, 1977), 42 FR 26269 (May 23, 1977) (NYSE/CHX); 13531 (May 12, 1977), 42 FR 26273 (May 23, 1977) (NYSE/PSE); 14093 (October 25, 1977), 42 FR 57199 (November 1, 1977) (NYSE/Phlx); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (NASD/BSE, CSE, CHX and PSE); 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (NASD/BSE, CSE, CHX and PSE); 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (NASD/ISE); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (NASD/Nasdaq).

[174] The Commission notes that regulation that is to be covered by the Rule 17d–2 agreements for common members will be carried out by FINRA under the Regulatory Contracts for EDGX or EDGA members that are not also members of FINRA.

[175] Alternatively, EDGX and EDGA could demonstrate that they have the ability to fulfill their regulatory obligations.

[176] *See* 15 U.S.C. 78f(b)(1).

[177] *See* Section III.E.5, *supra.*

[178] *See* Exchange Rule 8.10(b).

[179] *See* Exchange Rule 8.10(c).

[180] *See generally* Exchanges Amended and Restated Bylaws Article X and Exchange Rules Chapters II and VIII.

[181] *See* Exchange Rules 2.2 and 8.1(a).

[182] *See* Exchange Rule 8.15.

Act Rule 19d–1(c)(2) must be declared effective by the Commission.[183]

The Commission finds that the Exchanges Amended and Restated By-Laws and the rules of each Exchange concerning the Exchange's disciplinary and oversight programs are consistent with the requirements of sections 6(b)(6) and 6(b)(7)[184] of the Act in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of EDGX and EDGA are designed to provide the Exchanges with the ability to comply, and with the authority to enforce compliance by their members and persons associated with their members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchanges.[185]

F. Trading Systems of EDGX and EDGA

1. Trading Rules

Each Exchange will operate a fully automated electronic order book. Members of EDGX and EDGA and entities that enter into sponsorship arrangements with such members (collectively, "Users") will have access to the systems of EDGX and EDGA (each, an "EDGX System," an "EDGA System," or an "Exchange System," and, together, the "Exchange Systems").[186] Users will be able to electronically submit market and various types of limit orders to EDGX or EDGA from remote locations.[187] All orders submitted to the Exchanges will be displayed unless designated otherwise by the Exchange member submitting the order. Displayed orders will be displayed on an anonymous basis at a specified price. Non-displayed orders will not be displayed but will be ranked in an Exchange System at a specified price.[188] The Exchanges' Systems will continuously and automatically match orders pursuant to price/time priority, except that displayed orders will have priority over non-displayed orders at the same price.[189]

Each Exchange System is designed to comply with Rule 611 of Regulation NMS[190] by requiring that, for any execution to occur on the Exchange during regular trading hours, the price must be equal to, or better than, any "protected quotation" within the meaning of Regulation NMS ("Protected Quotation"), unless an exception to Rule 611 of Regulation NMS applies.[191] Each Exchange will direct any orders or portion of orders that cannot be executed in their entirety to away markets for execution, unless the terms of the orders direct the Exchange not to route such orders away.[192]

Each Exchange intends to operate as an automated trading center in compliance with Rule 600(b)(4) of Regulation NMS.[193] Each Exchange will display automated quotations at all times except in the event that a systems malfunction renders the Exchange's System incapable of displaying automated quotations.[194] Each Exchange has designed its rules relating to orders, modifiers, and order execution to comply with the requirements of Regulation NMS, including an immediate-or-cancel functionality.[195] These rules include accepting orders marked as intermarket sweep orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other trading centers,[196] and routing orders marked as intermarket sweep orders by a User to a specific trading center for execution.[197] In addition, each Exchange's rules address locked and crossed markets,[198] as required by Rule 610(d) of Regulation NMS.[199] The Commission believes that the Exchanges' rules are consistent with the Act, in particular with the requirements of Rule 610(d) and Rule 611 of Regulation NMS.

As stated above, each Exchange intends to operate as an automated trading center and have its best bid and best offer be a Protected Quotation.[200] To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new Protected Quotations, as well as all necessary information (such as final technical specifications).[201] Therefore, the Commission believes that it would be a reasonable policy and procedure under Rule 611(a) for industry participants to begin treating each Exchange's best bid and best offer as a Protected Quotation within 90 days after the date of this order, or such later date as the Exchange begins operations as national securities exchange.

2. Section 11 of the Act

Section 11(a)(1) of the Act[202] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts"), unless an exception applies. Rule 11a2–2(T) under the Act,[203] known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[204] (iii) may not be affiliated with the executing

[183] 17 CFR 240.19d–1(c)(2).

[184] 15 U.S.C. 78f(b)(6) and (b)(7).

[185] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[186] To obtain authorized access to the Exchange Systems, each User must enter into a User Agreement with the Exchange(s). *See* Exchange Rule 11.3(a).

[187] One proposed order type is the Step-up Order, which is a market or limit order with the instruction that the Exchange System display the order to Users at or within the National Best Bid or Offer ("NBBO") price pursuant to Exchange Rule 11.9(b)(1)(C). *See* Exchange Rule 11.5(c)(11). Prior to routing to away markets, or cancellation per the order's instructions, Step-up Orders will be displayed to Users, in a manner that is separately identifiable from other Exchange orders, at or within the NBBO price for a period of time not to exceed 500 milliseconds, as determined by the Exchange. *See* Exchange Rule 11.9(a)(1)(C). In its comment letter, Nasdaq notes that the Commission recently has proposed a rule amendment to prohibit the use of this type of order, known as a flash order, and questions whether the Commission should approve the Form 1 Applications with an order type that "would become illegal if the Commission's flash order ban is adopted." *See* Nasdaq Letter, *supra* note 4, at 6. The Commission notes that it has not acted on its proposal to prohibit the use of flash orders. The Commission also notes that the Exchanges will be required to comply with any Commission rules regarding flash orders and that the Exchanges have represented that they will do so. *See* letter from William O'Brien, Chief Executive Officer, DE Holdings, DECN, EDGX, and EDGA, to James Brigagliano, Co-Acting Director, Division of Trading and Markets, Commission, dated August 10, 2009.

[188] The rules of EDGX and EDGA do not provide for specialists or market makers.

[189] *See* Exchange Rule 11.8.

[190] 17 CFR 242.611.

[191] *See* Exchange Rule 11.9(a).

[192] *See* Exchange Rule 11.9(b)(2).

[193] 17 CFR 242.600(b)(4).

[194] *See* Exchange Rule 11.9(d); *see also* 17 CFR 242.600(b)(3).

[195] *See* Exchange Rules 11.5 and 11.9; *see also* 17 CFR 242.600(b)(3).

[196] *See* Exchange Rule 11.5(d)(1).

[197] *See* Exchange Rule 11.5(d)(2).

[198] *See* Exchange Rule 11.16.

[199] 17 CFR 242.610(d).

[200] 17 CFR 242.600(b)(58).

[201] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006).

[202] 15 U.S.C. 78k(a)(1).

[203] 17 CFR 240.11a2–2(T).

[204] The member may, however, participate in clearing and settling the transaction. *See* 1978 Release, *infra* note 206.

member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In letters to the Commission,[205] each Exchange requested that the Commission concur with its conclusion that Exchange members entering orders into each respective Exchange System satisfy the requirements of Rule 11a2–2(T). For the reasons set forth below, the Commission believes that EDGA members entering orders into the EDGA System and EDGX members entering orders into the EDGX System would satisfy the conditions of the Rule.

The rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. Each Exchange System receives orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[206] Because each Exchange System receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that each System satisfies the off-floor transmission requirement.

Second, the rule requires that the member not participate in the execution of its order. Each Exchange represents that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order's execution.[207] According to each Exchange, the execution of a member's order is determined solely by what orders, bids, or offers are present in each system at the time the member submits the order and on the priority of those orders, bids and offers.[208] Accordingly, the Commission believes that Exchange members do not participate in the execution of orders submitted into the Exchange Systems.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the Exchange Systems, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[209] Each Exchange represents that the design of its Exchange System ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.[210] Based on the Exchanges' representations, the Commission believes that the Exchange Systems satisfy this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[211] Each Exchange represents that Exchange members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[212]

G. Section 11A of the Act

Section 11A of the Act and the rules thereunder form the basis of our national market system and impose requirements on exchanges to implement its objectives. Specifically, national securities exchanges are required, under Rule 601 of Regulation NMS,[213] to file transaction reporting plans regarding transactions in listed equity and Nasdaq securities that are executed on their facilities. Currently registered exchanges satisfy this requirement by participating in the Consolidated Transaction Association Plan ("CTA Plan") for listed equities and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP Plan") for Nasdaq securities.[214] Before the Exchanges can begin operating as exchanges, each must join these plans as a participant.

National securities exchanges are required, under Rule 602 of Regulation

[205] *See* letter from Eric W. Hess, General Counsel and Secretary, EDGA Exchange, to Elizabeth Murphy, Secretary, Commission, dated February 11, 2010; and letter from Eric W. Hess, General Counsel and Secretary, EDGX Exchange, to Elizabeth Murphy, Secretary, Commission, dated February 11, 2010 (collectively, "Exchange 11(a) Request Letters").

[206] *See, e.g.,* Securities Exchange Act Release Nos. 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (order approving proposed rules of NASDAQ OMX BX); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange as electronic trading facility of the Pacific Exchange ("PCX")); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange ("Amex") Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange ("Phlx") Automated Communications and Execution System ("1979 Release")); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System ("1978 Release")).

[207] *See* Exchange 11(a) Request Letters, *supra* note 205. The member may only cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* 1978 Release, *supra* note 206 (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

[208] *Id.*

[209] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 206.

[210] *See* Exchange 11(a) Request Letters, *supra* note 205.

[211] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 206(stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

[212] *See* Exchange 11(a) Request Letters, *supra* note 205

[213] 17 CFR 242.601.

[214] These plans also satisfy the requirement in Rule 603 that national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks. *See* 17 CFR 242.603. *See also* Nasdaq Exchange Registration Order, *supra* note 75.

NMS,[215] to collect bids, offers, quotation sizes and aggregate quotation sizes from those members who are responsible broker or dealers. National securities exchanges must then make this information available to vendors at all times when the exchange is open for trading. The current exchanges satisfy this requirement by participating in the Consolidated Quotation System Plan ("CQ Plan") for listed equity securities and the Nasdaq UTP Plan for Nasdaq securities. Before EDGX and EDGA can begin operating as exchanges, each must join the CQ Plan as a participant, in addition to the CTA Plan and the Nasdaq UTP Plan.

Finally, national securities exchanges must make available certain order execution information pursuant to Rule 605 of Regulation NMS.[216] Current exchanges have standardized the required disclosure mechanisms by participating in the Order Execution Quality Disclosure Plan.[217] Each Exchange must join this plan before it begins operations as an exchange.

H. Order Routing

As discussed above, DE Holdings wholly owns EDGA, EDGX, and DECN.[218] As such, each Exchange is affiliated with DECN,[219] which is a registered broker-dealer and member of FINRA. The Exchanges also anticipate that DECN will be a member of each Exchange.

Each Exchange's Rule 2.10 provides generally that, without prior Commission approval, the Exchange may not, directly or indirectly, acquire or maintain an ownership interest in a member organization of such Exchange. In addition, each Exchange's Rule 2.10 provides that, without prior Commission approval, none of the Exchange's members may be or become an affiliate of the Exchange or an affiliate of an affiliate of the Exchange. However, each Exchange proposes that its affiliate, DECN, become a member of the Exchange to provide certain routing services on behalf of the Exchange. Specifically, each Exchange proposes to (1) operate DECN as a facility of such Exchange to provide outbound routing services to other securities exchanges,[220] automated trading systems, electronic communications networks, or other broker-dealers (collectively, "Trading Centers"), and (2) receive through DECN orders routed inbound to such Exchange from its affiliated exchange (*i.e.,* EDGX in the case of EDGA, and EDGA in the case of EDGX).[221] Accordingly, each Exchange seeks Commission approval of an exception in the Exchange's Rule 2.10 that will permit the affiliation between the Exchange and its member, DECN.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange, particularly where a member is routing orders to such affiliated exchange,[222] each Exchange has proposed limitations and conditions on DECN's affiliation with the Exchange. Specifically, each Exchange proposes that DECN operate as an affiliated outbound router on behalf of the Exchange, subject to certain conditions set forth in the Exchange's Rule 2.11; and that DECN operate as an affiliated inbound router on behalf of the Exchange subject to certain conditions set forth in the Exchange's Rule 2.12.[223]

1. DECN as Outbound Router

Each Exchange proposes that DECN would operate as a facility of the Exchange providing outbound routing services from the Exchange to other Trading Centers.[224] DECN's operation as a facility providing outbound routing services for each Exchange is subject to the conditions that:

- The Exchange regulates DECN as a facility of the Exchange;
- FINRA, a self-regulatory organization unaffiliated with the Exchange, is DECN's designated examining authority;
- DECN only provides routing services unless otherwise approved by the Commission;
- The use of DECN for outbound routing by Exchange members is optional; and
- The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including DECN) and any other entity.[225]

As a facility of each Exchange, DECN will be subject to each Exchange's and the Commission's regulatory oversight; and each Exchange will be responsible for ensuring that DECN's outbound routing function is operated consistent with section 6 of the Act and the Exchange's rules. In addition, each Exchange will be required to file with the Commission rule changes and fees relating to DECN's outbound routing function. Any such fees relating to DECN's outbound router function will be subject to exchange non-discrimination requirements. Further, the Commission believes that the proposed conditions on which DECN will operate as a facility providing outbound routing services for each Exchange should minimize the potential for conflicts of interest and informational advantages involved where a member firm is affiliated with an exchange to which it is routing orders. The Commission notes that the proposed conditions for the operation of DECN as affiliated outbound router on behalf of each Exchange are consistent with conditions the Commission has approved for other exchanges.[226] The Commission therefore finds the proposed operation of DECN as an affiliated outbound router of each Exchange to be consistent with the Act.

2. DECN as Inbound Router

Each Exchange also proposes that DECN, operating as a facility of the Exchange, provide routing services from EDGX to EDGA, in the case of EDGA, and from EDGA to EDGX, in the case of EDGX (*i.e,* "inbound" routing), subject to the following conditions and limitations:

- The Exchange enters into (1) a 17d–2 agreement with FINRA, a non-affiliated SRO,[227] to relieve the Exchange of regulatory responsibilities for DECN with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) a regulatory services agreement with FINRA, a non-affiliated SRO, to perform regulatory responsibilities for DECN for unique Exchange rules.
- The regulatory service agreement requires the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters

[215] 17 CFR 242.602.

[216] 17 CFR 242.605.

[217] *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[218] *See* Section III.A, *supra.*

[219] The Exchanges state that DECN will do business under the name of "DE Route."

[220] Securities exchanges to which each Exchange proposes to route orders include its affiliated exchange (*i.e.,* EDGX in the case of EDGA, and EDGA in the case of EDGX).

[221] *See* Notice, *supra* note 3.

[222] *See e.g.,* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 FR (March 6, 2006).

[223] *See* Exchange Rules 2.11 and 2.12.

[224] *See* Exchange Rule 2.11. *See also* Notice, *supra* note 3.

[225] *Id.*

[226] *See, e.g.,* Securities Exchange Act Release No. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (order approving outbound routing by broker-dealer affiliate of Nasdaq Stock Exchange); and BATS Exchange Order, *supra* note 65.

[227] The Rule 17d–2 agreement is discussed at Section III.E.4, *supra.*

(collectively "Exceptions") in which DECN is identified as a participant that has potentially violated Exchange or Commission Rules, and requires that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DECN is identified as a participant that has potentially violated Exchange or Commission rules.

• The Exchange has in place a rule that requires DE Holdings to establish and maintain procedures and internal controls reasonably designed to ensure that DECN does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.

• Routing of orders from DECN to the Exchange, in DECN's capacity as a facility of the affiliated exchange (*i.e.,* EDGX, in the case of EDGA, and EDGA, in the case of EDGX), be authorized for a pilot period of 12 months.[228]

Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit DECN to be affiliated with each Exchange and to provide inbound routing to each Exchange on a pilot basis, subject to the conditions described above.

Each Exchange has proposed five conditions applicable to DECN's inbound routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of DECN,[229] combined with FINRA's monitoring of DECN's compliance with the equity trading rules and quarterly reporting to each Exchange, will help to protect the independence of each Exchange's regulatory responsibilities with respect to DECN. The Commission also believes that the requirement that each Exchange establish and maintain procedures and internal controls reasonably designed to ensure that DECN does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange is reasonably designed to ensure that DECN cannot use any information advantage it may have because of its affiliation with the Exchange. Furthermore, the Commission believes that each Exchange's proposal to allow DECN to route orders inbound to its affiliated exchange (*i.e.,* from EDGX, in the case of EDGA, and from EDGA, in the case of EDGX), on a pilot basis, will provide each Exchange and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of an Exchange to route orders inbound to the Exchange and whether such affiliation provides an unfair competitive advantage.

Further, the Commission notes that the proposed conditions for the operation of DECN as affiliated inbound router on behalf of each Exchange are similar to conditions the Commission has approved for other exchanges.[230] The Commission therefore finds the proposed operation of DECN as an affiliated inbound router of each Exchange is consistent with the Act.

I. Listing Requirements/Unlisted Trading Privileges

The Exchanges initially do not intend to list any securities. Accordingly, the Exchanges have not proposed rules that would allow them to list any securities at this time.[231] Instead, the Exchanges have proposed to trade securities pursuant to unlisted trading privileges, consistent with section 12(f) of the Act and Rule 12f–5 thereunder. Rule 12f–5 requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.[232] Each Exchange's rules allow it to extend unlisted trading privileges to any security listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with section 12(f) of the Act.[233] Each Exchange's rules provide for transactions in the class or type of security to which the exchange intends to extend unlisted trading privileges.[234] In addition, pursuant to its rules, each Exchange will cease trading any equity security admitted to unlisted trading privileges that is no longer listed on another national securities exchange or to which unlisted trading privileges may no longer be extended, consistent with Section 12(f). The Commission finds that these rules are consistent with the Act.[235]

J. Exchange Fees

In the Form 1 Applications, the Exchanges generally describes their proposed fees and note that they, may, in the future, prescribe such reasonable dues, fees, and assessments or other charges as they may deem appropriate.[236] Nasdaq, however, argues that the Form 1 Applications are deficient because the Exchanges have not included their fee schedules in the Form 1 Applications.[237] The Commission notes that it previously approved Form 1 applications that did not include fee schedules. For example, the Commission approved the Form 1 application of BATS Exchange, Inc. ("BATS") on August 18, 2008,[238] and BATS subsequently filed its fee schedule on October 21, 2008, pursuant to Exchange Act Section 19(b).[239] The

[228] *See* Exchange Rule 2.12.

[229] This oversight will be accomplished through the Rule 17d–2 agreement and the RSA.

[230] *See e.g.,* Securities Exchange Release Nos. 60598 (September 1, 2009), 74 FR 46280 (September 8, 2009) (SR–ISE–2009–45); 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (order approving proposed rulebook of NASDAQ OMX BX); and 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order granting accelerated approval to File No. SR–NYSEALTR–2008–07).

[231] The Exchanges have incorporated listing standards for certain derivative securities products in their rules. However, each Exchange's rules will prohibit the Exchange from listing any derivative security product pursuant to these listing standards until the Exchange submits a proposed rule change to the Commission to amend its listing standards to comply with Rule 10A–3 under the Act and incorporate qualitative listing criteria. *See* Exchange Rule 14.1(a).

[232] 17 CFR 240.12f-5. *See also* Securities Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (adopting Rule 12f–5).

[233] *See* Exchange Rule 14.1(a).

[234] *Id.* The Exchanges' rules currently do not provide for the trading of options, security futures, or other similar instruments.

[235] Each Exchange has represented to the Commission that it intends to phase-in the trading of securities currently trading on the DECN to each Exchange, and that it will provide appropriate advance notice to its members of the phase-in schedule. The Commission believes that this approach is appropriate and should help maintain an orderly transition to the Exchanges. *See* Amendment No. 2, *supra* note 5.

[236] *See* Form 1 Applications, Exhibit E, Response F.

[237] *See* Nasdaq Letter, *supra* note 4, at 7–8. Nasdaq also raises questions concerning fees that Nasdaq proposed in File No. SR–NASDAQ–2009–054. *See* Nasdaq Letter, *supra* note 4, at 8. The Commission believes that Nasdaq's proposed fees should be addressed in the context of Nasdaq's proposal, rather than in connection with the Form 1 Applications.

[238] *See* BATS Exchange Order, *supra* note 65.

[239] *See* Securities Exchange Act Release No. 58871 (October 28, 2008), 73 FR 65428 (November 3, 2008) (notice of filing and immediate effectiveness of File No. SR–BATS–2008–009) (implementing the fee schedule that would be in effect on the date BATS commenced operations as a national securities exchange). Similarly, DE

Commission also notes that any fees to be charged by the Exchanges would need to be filed with the Commission pursuant to section 19(b) of the Act and would not be effective until filed with, or filed with and approved by, the Commission.

IV. Exemption From Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

Each Exchange proposes to incorporate by reference certain rules of FINRA.[240] Thus, for certain EDGA rules, EDGA members will comply with an EDGA rule by complying with the referenced FINRA rule. Similarly, for certain EDGX rules, EDGX members will comply with an EDGX rule by complying with the referenced FINRA rule.

In connection with its proposal to incorporate FINRA rules by reference, each Exchange requested, pursuant to Rule 240.0–12,[241] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.[242] Each Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. Each Exchange agrees to provide written notice to its members whenever FINRA proposes a change to a cross-referenced rule [243] and whenever any such proposed changes are approved by the Commission.[244]

Using its authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.[245] Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules. In addition, each SRO incorporated by reference only regulatory rules (*e.g.,* margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (*i.e.,* did not "cherry-pick" certain individual rules within a category). Each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting each Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that each Exchange proposes to incorporate by reference into their respective rules. This exemption is conditioned upon each Exchange providing written notice to its members whenever FINRA proposes to change a rule that each Exchange has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. Consequently, the Commission grants each Exchange's exemption request.

V. Conclusion

It is ordered that the applications of each of EDGX and EDGA for registration as a national securities exchange be, and hereby is, granted.

It is further ordered that operation of each of EDGX and EDGA is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans.* Each Exchange must join the CTA Plan, the CQ Plan, the Nasdaq UTP Plan, and the Order Execution Quality Disclosure Plan.

B. *Intermarket Surveillance Group.* Each Exchange must join the Intermarket Surveillance Group.

C. *Minor Rule Violation Plan.* A MRVP filed by each Exchange under Rule 19d–1(c)(2) must be declared effective by the Commission.[246]

D. *17d–2 Agreement.* An agreement pursuant to Rule 17d–2 [247] between FINRA and each Exchange that allocates to FINRA regulatory responsibility for those matters specified above [248] must be approved by the Commission, or each Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. *Regulatory Contracts.* Each Exchange and FINRA, and each Exchange and ISE LLC, must finalize the provisions in the Regulatory Contracts, as described above,[249] that will specify the Exchange and Commission rules for which FINRA and ISE will provide certain regulatory functions, or each Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

F. *Examination by the Commission.* Each Exchange must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate the Exchange.

G. *Trade Processing and Exchange Systems.* Each Exchange must have, and represent in letters to the staff in the Commission's Division of Trading and Markets that it has, adequate procedures and programs in place, as noted in Commission Automation Policy Review guidelines,[250] to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange's systems.

It is further ordered, pursuant to section 36 of the Act,[251] that each Exchange shall be exempt from the rule filing requirements of section 19(b) of

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Holdings notes that Nasdaq filed fee schedules for two of its facilities, Nasdaq BX and the Nasdaq Options Market, after the Commission approved rules establishing the facilities. *See* DE Holdings Response, *supra* note 4, at 5.

[240] Specifically, each Exchange proposes to incorporate by reference the following FINRA rules: FINRA's 1010 Series (Membership Proceedings) (referenced in each Exchange's Rule 2.4); FINRA's 12,000 Series (Code of Arbitration for Customer Disputes) and FINRA's 13,000 Series (Code of Arbitration Procedure for Industry Disputes) (referenced in each Exchange's Rules 9.1 and 9.4).

[241] 17 CFR 240.0–12.

[242] *See* letter from Eric W. Hess, General Counsel and Secretary, EDGA, to Elizabeth M. Murphy, Secretary, Commission, dated February 11, 2010; and letter from Eric W. Hess, General Counsel and Secretary, EDGX, to Elizabeth M. Murphy, Secretary, Commission, dated February 11, 2010 (together, the "Exchange 19(b) Exemption Request Letters").

[243] *See* Exchange 19(b) Exemption Request Letters, *supra* note 242.

[244] Each Exchange will provide such notice through a posting on the same Web site location where each Exchange will post its own rule filings pursuant to Rule 19b–4 under Act, within the time frame required by that Rule. The Web site posting will include a link to the location on the FINRA Web site where FINRA's proposed rule change is posted. *Id.*

[245] *See, e.g.,* Securities Exchange Act Release No. 57478 (March 12, 2008) 73 FR 14521, (March 18, 2008) (order approving rules governing the trading of options on the NASDAQ Options Market); Nasdaq Exchange Registration Order, *supra* note 75; and BATS Exchange Registration Order, *supra* note 65.

[246] 17 CFR 240.19d–1(c)(2).

[247] 17 CFR 240.17d–2.

[248] *See* Sections III.E.4 and III.H.2, *supra.*

[249] *See* Sections III.E.3 and III.H.2, *supra.*

[250] On November 16, 1989, the Commission published its first Automation Review Policy ("ARP I"), in which it created a voluntary framework for self-regulatory organizations to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. On May 9, 1991, the Commission published its second Automation Review Policy ("ARP II") to clarify the types of review and reports that were expected from SROs. *See* Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989); and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

[251] 15 U.S.C 78mm.

the Act [252] with respect to the FINRA rules the Exchange proposes to incorporate by reference into the Exchange's rules, subject to the conditions specified in this Order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5868 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29174; File No. 811–21873]

American Vantage Companies; Notice of Application

March 11, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: American Vantage Companies requests an order declaring that it has ceased to be an investment company.

APPLICANT: American Vantage Companies (the "Company").

FILING DATES: The application was filed on November 25, 2008 and amended on April 30, 2009, November 12, 2009, February 4, 2010 and March 10, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 5, 2010 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, P.O. Box 81920, Las Vegas, Nevada 89180.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

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.

Applicant's Representations

1. The Company is a holding company that operates through its subsidiaries primarily in the gaming and hospitality and corporate staffing businesses. Although the Company was not engaged in the business of investing, reinvesting, owning, holding or trading in securities, the Company registered as a closed-end investment company on June 21, 2006 because it held investment securities that had a value exceeding 40% of the Company's total assets on an unconsolidated basis from March 2005 through March 2006.[1] The Company no longer has investment securities having a value near or exceeding 40% of its total assets nor does it hold itself out as being engaged primarily, nor does it propose in the future to engage primarily, in the business of investing, reinvesting or trading in securities. On March 27, 2008, the Company's board of directors resolved that it would be in the best interest of the Company to deregister from the Act. The Company's stockholders approved a proposal to deregister the Company from the Act on November 14, 2008. The Company seeks an order declaring that it has ceased to be an investment company under the Act.

2. The Company was incorporated in Nevada in 1979 and since then has engaged in the business of recreational and leisure time activities, including casino gaming and hospitality. The Company currently maintains ongoing business operations through its subsidiaries, American Vantage Brownstone, LLC, which focuses on Native American tribal gaming and commercial/jurisdictional gaming, and COD. Despite its registration under the Act, the Company has never represented or stated that it is involved in any business other than gaming, media, restaurants and entertainment and has always emphasized its operating results rather than investment income as a material factor in its business. The Company has never employed an investment advisor nor is there an employee who is specifically assigned to manage the Company's investments.

3. As described more fully in the application, the Company's assets primarily consist of interests in its wholly-owned and majority-owned subsidiaries and a 49% interest in the Border Grill and the Company derives substantially all of its revenues from operations. The Company currently has investment securities that equal approximately 16.4% of its total assets on an unconsolidated basis.[2] For the six months ended June 30, 2009, the Company derived 98.8% of its revenues from its operating subsidiaries. The Company derived only 1.2% of its income from investment assets for the six months ended June 30, 2009.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an investment company as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(1)(C) of the Act defines an investment company as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines investment securities as all securities except (a) Government securities, (B) securities issued by employees'

[252] 15 U.S.C 78s(b).

[1] These investment securities principally consisted of 7,000,000 shares of common stock, and warrants to purchase 1,400,000 shares of common stock, of Genius Products, Inc. ("Genius") acquired when the Company sold its subsidiary American Vantage Media Corporation to Genius, together with a 49% interest in the Border Grill Restaurant ("Border Grill"). The Company privately placed most of its shares of Genius stock and used the net proceeds for working capital and to fund its purchase in September 2007 of Candidates on Demand Group, Inc. ("COD"), a temporary placement agency and recruitment firm which operates as a wholly-owned subsidiary of the Company.

[2] The Company's investment assets consist of its 49% interest in Border Grill, auction-rate securities, and its remaining Genius common stock and warrants.

securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of section 3(c) of the Act.

3. The Company states that it is actively engaged in ongoing business operations in the placement agency, restaurant, gaming and entertainment fields and that it has never been an investment company as defined by section 3(a)(1)(A).[3] Because the Company's investment securities are currently only approximately 16.4% of its total assets, the Company believes that it no longer meets the definition of investment company as defined in section 3(a)(1)(C) of the Act. The Company further states that it intends to manage its assets and any future cash earnings in a manner that will cause the Company to continue to be excluded from the definition of an investment company under the Act. The Company states that after entry of the order requested by the application, it will continue to be a publicly-held company and will continue to be subject to the reporting and other requirements of the Securities Exchange Act of 1934. Accordingly, the Company states that it is qualified for an order of the Commission pursuant to section 8(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5920 Filed 3–17–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61692; File No. SR–OCC–2010–0]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to ETFS Palladium Shares And ETFS Platinum Shares

March 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on March 1, 2010, The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change would add ETFS Palladium Shares and ETFS Platinum Shares to the interpretation following the definition of "fund share" in Article I, Section 1 of OCC's By-Laws.

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 such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of options or security futures on ETFS Palladium Shares or ETFS Platinum Shares. To accomplish this purpose, OCC is proposing to amend the interpretation following the definition of "fund share" in Article I, Section 1 of OCC's By-Laws. On May 30, 2008, the Commission approved rule filing SR–OCC–2008–07, which added the interpretation with respect to the treatment and clearing of options and security futures on SPDR Gold Shares.[2] On December 4, 2008, the Commission approved rule filings SR–OCC–2008–13 and SR–OCC–2008–14, which amended the interpretation to extend similar treatment to options and security futures on iShares® COMEX Gold Shares and iShares® Silver Shares.[3] On February 25, 2010, the Commission approved rule filing SR–OCC–2009–20, which extended similar treatment to options and security futures on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares.[4] Under the current proposed rule change, OCC would also (i) clear and treat as securities options any option contracts on ETFS Palladium Shares and ETFS Platinum Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFS Palladium Shares and ETFS Platinum Shares.

In its capacity as a "derivatives clearing organization" registered with the Commodity Futures Trading Commission ("CFTC"), OCC is filing this proposal for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options or the clearing of such futures as security futures constitutes a violation of the CEA. The products for which approval is requested are essentially the same as the options and security futures on SPDR Gold Shares, iShares® COMEX Gold Shares, and iShares® Silver Shares that OCC currently clears pursuant to the rule changes referred to above and exemptions issued by the CFTC.[5] OCC believes that this filing raises no new regulatory or policy issues.

OCC states that the proposed interpretation of OCC's By-Laws is consistent with the purposes and requirements of Section 17A of the Act[6] because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options and 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. OCC states that the proposed rule change accomplishes these purposes by reducing the likelihood of a dispute as to the Commission's jurisdiction or shared jurisdiction in the case of security futures over derivatives based on ETFS Palladium Shares or ETFS Platinum Shares. OCC also states that the

[3] The Company also states that none of its subsidiaries can be defined as an investment company for purposes of the Act and none of its subsidiaries is relying on sections 3(c)(1) or 3(c)(7) of the Act.

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

[2] Securities Exchange Act Release No. 57895, 73 FR 32066 (June 5, 2008).

[3] Securities Exchange Act Release No. 59054, 73 FR 75159 (Dec. 10, 2008).

[4] Securities Exchange Act Release No. 61591, 75 FR 9979 (Mar. 4, 2010).

[5] CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008). CFTC Order Exempting the Trading and Clearing of Certain Products Related to iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares, 73 FR 79830 (Dec. 3, 2008).

[6] 15 U.S.C. 78q–1.

proposed rule change is not inconsistent with OCC's By-Laws and Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve 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 No. SR–OCC–2010–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File No. SR–OCC–2010–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jspU*>. 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 submission should refer to File No. SR–OCC–2010–03 and should be submitted on or before April 8, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5914 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61694; File No. SR–NYSE–2010–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC To Amend the Bylaws of NYSE Euronext To Adopt a Majority Voting Standard in Uncontested Elections of Directors

March 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2010, New York Stock Exchange LLC ("NYSE" 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 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 submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the "Corporation"),[3] to amend its bylaws ("Bylaws") to replace the plurality vote standard for election of directors in uncontested elections that is currently in the Bylaws with a majority vote standard for such elections. The existing plurality vote standard will be retained in connection with contested elections for directors. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, and on the Exchange's Web site at *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 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 submitting this rule filing in connection with the Corporation's proposal to amend its Bylaws to replace the plurality vote standard for election of directors in uncontested elections that is currently in the Bylaws with a majority vote standard for such elections. Specifically, the Bylaws currently provide that "directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors." Under the Corporation's corporate governance

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] NYSE, a New York limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

guidelines previously adopted by the Board, however, any director nominee in an uncontested election (being an election in which the number of nominees equals the number of directors to be elected) who receives a greater number of "withheld" votes than "for" votes (including any "against" votes if that option were to be made available on the proxy card) must immediately tender his or her resignation from the Board. The Board will then decide, through a process managed by the Nominating and Governance Committee and excluding the nominee in question, whether to accept the resignation. In a contested election (being an election in which the number of nominees exceeds the number of directors to be elected), the unqualified plurality vote standard controls.

Uncontested Election

The Corporation is proposing to add an explicit majority voting provision for uncontested director elections to the Bylaws, thereby replacing the plurality vote standard for election of directors in such elections that is currently in the Bylaws. The existing plurality vote standard will be retained in connection with contested elections for directors. Under the proposed amendment to the Bylaws, the proxy card would change for an uncontested election, and the stockholders would be given the choice to vote "for," "against" or "abstain" with respect to each director nominee individually.[4] In such an election, each director would be elected by the vote of the majority of the votes cast with respect to such director's election, meaning that the number of votes cast "for" such director's election exceeded the number of votes cast "against" that director's election (with "abstentions" not counted as a vote cast either "for" or "against" such director's election). In the event that any incumbent director fails to receive a majority of the votes cast, such director would be required to tender his or her resignation to the Nominating and Governance Committee of the Board (or another committee designated by the Board), and such committee would make a recommendation to the Board as to whether to accept or reject such resignation or whether other action should be taken. The Board would then act on the recommendation of such committee and publicly disclose its decision regarding the tendered resignation and the rationale behind the decision.

The proposed amendment to the Bylaws also provides that a director who tenders his or her resignation as described above will not participate in the recommendation by the Nominating and Governance Committee or the Board of Directors action regarding whether to accept the tendered resignation. In the event that each member of the Nominating and Governance Committee fails to receive a majority of the votes cast in the same uncontested election, then the independent directors who received a majority of the votes cast in such election must appoint a committee among themselves to consider the tendered resignation and recommend to the Board whether to accept it. However, if the only directors who received a majority of the votes cast in such election constitute three or fewer directors, all directors may participate in the action regarding whether to accept the tendered resignation.

Pursuant to the proposed amendment to the Bylaws, if the Board accepts a director's resignation as part of the process described above for uncontested elections, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board may (i) fill the remaining vacancy as provided in Section 3.6 of the Bylaws and Article VI, Section 6 of the Certificate of Incorporation (involving a majority vote of the remaining directors then in office, though less than a quorum, or by the sole remaining director) or (ii) decrease the size of the Board as provided in Section 3.1 of the Bylaws and Article VI, Section 3 of the Certificate of Incorporation (involving adoption of a resolution by two-thirds of the directors then in office).

General Election Requirements

The following applies to elections of directors and is not being amended. Section 2.7 of the Bylaws provides that, unless otherwise provided in the Certificate of Incorporation of the Corporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder that has voting power upon the matter in question. This entitlement, however, is subject to the voting limitation in the Certificate of Incorporation that generally prohibits a beneficial owner, either alone or together with related parties, from voting or causing the voting of shares of stock of the corporation, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter. Any votes purported to be cast in excess of this limitation will be disregarded.[5]

Relative to the foregoing, if any beneficial owner of the Corporation's stock, either alone or together with related parties, is party to any agreement, plan or other arrangement with any other person or entity relating to shares of stock of the Corporation entitled to vote on any matter under circumstances in which (i) the result would be that shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement would not be voted on any matter, or any proxy relating thereto would be withheld and (ii) the effect of the agreement, plan or arrangement would be to enable a beneficial owner (but for these provisions), either alone or together with related parties, to vote, possess the right to vote or cause the voting of shares of the Corporation's stock to exceed 10% of the then outstanding votes entitled to be cast (assuming that all shares of stock of the Corporation that are subject to the agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), then this recalculated 10% voting limitation will be applicable. Any votes purported to be cast in excess of this recalculated voting limitation will be disregarded.[6]

At each meeting of stockholders of the Corporation, except as otherwise provided by law or the Certificate of Incorporation of the Corporation, the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, will constitute a quorum (it being understood that any shares in excess of the applicable voting limitation discussed above will not be counted as present at the meeting and will not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that such voting limitation shall have been duly waived as provided in the Certificate of Incorporation).[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[8] of the Act,

[4] Stockholders are currently given three choices when voting for a slate of director nominees: They can vote (1) "for" all nominees, (2) "withheld" for all nominees or (3) "withheld" for certain nominees and "for" the remaining nominees.

[5] *See* NYSE Euronext Amended and Restated Certificate of Incorporation at Article V, Section 1(A).

[6] *See id.*

[7] *See* NYSE Euronext Amended and Restated Certificate of Incorporation at Article VIII, Section 2.

[8] 15 U.S.C. 78f(b).

in general, and furthers the objectives of Section 6(b)(1) [9] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of, Section 6(b)(5) [10] of the Act, 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. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by codifying in the Bylaws the existing policy of the Corporation aimed at ensuring better corporate governance and accountability to stockholders by means of a voting procedure leading to election results that more accurately reflect the views of stockholders on the qualifications and suitability of individual director nominees, even if there are no alternative director nominees to vote for on the ballot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–2010–18 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–2010–18. 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–NYSE–2010–18, and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5916 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61700; File No. SR–NASDAQ–2010–034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish an Optional Non-Display Usage Cap for Internal Distributors of TotalView and OpenView

March 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on March 5, 2010, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to create an optional non-display usage cap of $30,000 per month for internal distributors of TotalView and OpenView.

The text of the proposed rule change is below. Proposed new language is in italics.[3]

* * * * *

7023. Nasdaq TotalView

(a) No change.

(a)(1)(A)–(C) No change.

(D) As an alternative to (a)(1)(A), (B) and (C), a market participant may purchase an enterprise license at a rate of $30,000 per month for internal use of non-display data. The enterprise license entitles a distributor to provide

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

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

TotalView and OpenView to an unlimited number of non-display devices within its firm. The enterprise license shall not apply to relevant Level 1 fees.

(a)(2) No change.

(b)–(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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend Nasdaq Rule 7023 and establish an optional $30,000 per month non-display TotalView and OpenView fee cap for internal distributors. The TotalView and OpenView fee cap would *not* include distributor fees. By providing this non-display usage cap, firms will have more administrative flexibility in their consumption of TotalView and OpenView information.

Currently, Nasdaq requires that internal distributors count and report each server and display device that processes TotalView-ITCH data as a professional TotalView and OpenView user. Some firms report upwards of 500 devices, while other firms report as few as one non-display device using TotalView-ITCH data.

Nasdaq proposes to permit a market participant to purchase an enterprise license at a rate of $30,000 per month for non-display usage in a firm. As the number of devices increase, so does the administrative burden on the end customer of counting these devices. For firms that feel they are near the capped amount, this new enterprise license helps relieve this administrative burden. Additionally, firms would purchase this optional enterprise license to reduce fees so no firms would experience a fee increase as a result of this filing. Nasdaq has offered similar enterprise licenses for professional and non-professional usage of TotalView-ITCH data in the past and is expanding this service to non-display devices as well.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general and with Sections 6(b)(5) of the Act,[5] 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 this proposal is in keeping with those principles by offering firms an option to increase their administrative flexibility in their consumption of TotalView and OpenView information.

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)[6] of the Act and Rule 19b–4(f)(6)(iii) thereunder[7] 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. In addition, at least five days prior to the instant filing, the Exchange provided 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 any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for web site viewing and printing in the Commission's Public Reference Room. 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

[4] 15 U.S.C. 78f.

[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)(iii).

information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–034 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5918 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61696; File No. SR–CBOE–2010–005]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

March 12, 2010.

I. Introduction

On January 27, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 establish strike price intervals and trading hours for Index-Linked Securities. The proposed rule change was published for comment in the **Federal Register** on February 8, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Prior to the commencement of trading options on Index-Linked Securities (also known as exchange-traded notes ("ETN")), CBOE has proposed to establish strike price intervals and trading hours for these new products. The Commission has approved CBOE's and other option exchanges' proposals to enable the listing and trading of options on Index-Linked Securities.[4]

$1 Strikes for ETN Options

CBOE's proposal would extend the trading conventions applicable to options on exchange-traded funds ("ETFs") to options on Index-Linked Securities. Specifically, under the proposed rule change, strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the proposed addition of new Interpretation and Policy .09 to Rule 5.5. The proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs.[5]

In support of its proposal, CBOE stated that it believes the marketplace and investors will be expecting ETN options to trade in a similar manner to options on ETFs. Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[6] Accordingly, the Exchange asserts that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for ETN options and that investors will be better served if $1 strike price intervals are available for ETN options (where the strike price is less than $200).

CBOE further stated that it 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 and trading of $1 strikes (where the strike price is less than $200) for ETN options.

Trading Hours for ETN Options

Similar to the trading hours for ETF options, the Exchange's proposal also would amend Interpretation and Policy .03 to Rule 6.1 by: (1) Adding new subparagraph (b) to provide that options on Index-Linked Securities, as defined under Interpretation and Policy .13 to Rule 5.3, may be traded on the Exchange until 3:15 p.m. each business day; and (2) making a technical change to Interpretation and Policy .03 to Rule 6.1.

III. Discussion

The Commission 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 exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs.[9] Accordingly, the proposal should provide consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and may provide investors with greater flexibility in achieving their investment objectives.

In addition, the Commission notes that CBOE has represented that it believes the Exchange and the Options Price Reporting Authority CBOE and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes for options on Index-Linked Securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2010–005) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5917 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 C.F.R. 200.30–3(a)(12). [sic]

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 61466 (February 2, 2010), 75 FR 6243.

[4] *See e.g.,* Securities Exchange Act Release Nos. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR–CBOE–2008–64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR–NYSEArca–2008–57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR–ISE–2008–86).

[5] *See* Interpretation and Policy .08 to Rule 5.5. *See also* Securities Exchange Act Release No. 46507 (September 17, 2002), 67 FR 60266 (September 25, 2002) (permitting list of options on ETFs at $1 strike price intervals) (SR–CBOE–2002–54).

[6] *See id.*

[7] 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).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 5.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61693; File No. SR–ISE–2010–16]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Payment for Order Flow Fees

March 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its payment for order flow 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 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 currently has a payment-for-order-flow ("PFOF") program that helps its market makers establish PFOF arrangements with an Electronic Access Member ("EAM") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM")[5] and Competitive Market Makers ("CMM"),[6] depending on who the order is preferenced to. PFOF fees collected by the Exchange that are not distributed are rebated back to the market makers.

The Exchange currently charges a PFOF fee of $0.65 per contract for all options classes that are not in the penny pilot program. For penny pilot classes, the Exchange charges a PFOF fee of $0.25 per contract. For competitive reasons, the Exchange now proposes to eliminate the PFOF fee in all options classes executed on the Exchange by persons who are not broker/dealers and who are not Priority Customers.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes that eliminating certain PFOF fees will enhance competition.

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[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–16 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–ISE–2010–16. 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

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001).

[6] *See* Exchange Act Release No. 53127 (January 13, 2006), 71 FR 3582 (January 23, 2006).

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

[8] 17 CFR 240.19b–4(f)(2).

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.[9] All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–16 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5915 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61690; File No. SR–NASD–2003–140]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 3, Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings ("IPOs")

March 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2003, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA"))[3] 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 substantially by FINRA. NASD amended the proposed rule change on December 9, 2003 and August 4, 2004. FINRA amended the proposed rule change on February 17, 2010.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing Amendment No. 3 to SR–NASD–2003–140, a proposed rule change to further and more specifically prohibit certain abuses in the allocation and distribution of shares in initial public offerings ("IPOs"). The text of the proposed rule change in Amendment No. 3 replaces and supersedes the text in the original rule filing and Amendment Nos. 1 and 2 thereto.

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 September 15, 2003, NASD (n/k/a FINRA) filed with the SEC SR–NASD–2003–140, a proposed rule change to adopt new FINRA Rule 5131 (originally proposed as NASD Rule 2712) to address disclosure and management of conflicts of interests that may adversely affect the allocation and distribution of IPOs. The proposed rule change also is intended to sustain public confidence in the IPO process, which is critical to the continued success of the capital markets. The SEC published the proposed rule change for notice and comment on December 20, 2004 and received twelve comment letters.[5]

FINRA is filing this Amendment No. 3 to address the substantive issues raised by commenters and to clarify and streamline the proposed rule. Among other things, the revisions simplify the spinning provision, clarify the scope of the lock-up disclosure and returned shares provisions and propose several new defined terms.

Proposed Rule 5131(b)—Spinning

FINRA is eliminating the presumption that any allocation within the prior six months of the receipt of investment banking business would violate the spinning provision. Instead, FINRA is proposing an outright prohibition on allocations in certain specified situations where a client relationship exists, where compensation has been received or where a member intends to provide or expects to be retained for investment banking services. Specifically, FINRA is proposing amendments to clarify that the spinning prohibition would apply to allocations to the account of an executive officer or director of a current investment banking client of the member in addition to companies from which the member has received investment banking compensation during the past twelve months. Further, FINRA is proposing to narrow the forward-looking window to three months in order to capture circumstances during such period where the member intends to provide, or expects to be retained by the company for, investment banking services within the next three months.

FINRA is adding Supplementary Material .01 to provide that the spinning prohibition would not apply to allocations of securities that are directed in writing by the issuer, its affiliates or selling shareholders, so long as the member has no involvement or influence, directly or indirectly, in the allocation decisions of the issuer, its affiliates or selling shareholders with respect to such issuer-directed securities. In addition, to clarify the scope of the types of accounts to which the spinning restrictions would apply, FINRA is proposing a new defined term "account of an executive officer or director." The proposed definition would mean any account in which an executive officer or director of a company, or a person materially supported by such executive officer or director, has a financial interest or over which such executive officer, director,

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by the NASD to amend the NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[4] The text of the proposed rule change in Amendment No. 3 replaces and supersedes the text in the original rule filing and Amendment Nos. 1 and 2 thereto.

[5] *See* Securities Exchange Act Release No. 50896 (December 20, 2004), 69 FR 77804 (December 28, 2004) ("Proposing Release").

or materially supported person has discretion or control, other than (A) an investment company registered under the Investment Company Act of 1940 and (B) any other investment fund over which neither an executive officer, director, or materially supported person has discretion or control, provided that executive officers, directors, and materially supported persons collectively own interests representing no more than 25% of the assets of such fund.

Proposed Rules 5131(d)(2)(B) and 5131(d)(3) and (4)—IPO Pricing and Trading Practices

FINRA is proposing to exempt from the notice and disclosure requirements releases and waivers effected solely to permit transfers of securities that are not for consideration where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor. FINRA believes that, where the transfer is not for consideration and the transferee is bound by the same terms, the concerns that generally would prompt the need for disclosure under the proposal are mitigated.

In addition, FINRA is proposing to amend the provision addressing the agreement among underwriters, which provides that the agreement between the book-running lead manager(s) and other syndicate members must require that any shares returned by a purchaser to a syndicate member after secondary market trading commences be used to: (a) Offset the existing syndicate short position, or (b) if no syndicate short position exists, the member must offer returned shares at the public offering price to unfilled customers' orders pursuant to a random allocation methodology. Because the allocation concerns underlying the proposed rule only exist where the market price of the returned shares is above the IPO price, FINRA is proposing to amend the proposed rule to provide that the returned shares provision would only be applicable where such shares are trading at a premium to their IPO price. In addition, because a reallocation of returned shares may extend the distribution of the securities for the purposes of SEC Regulation M, FINRA reminds members of their responsibility to undertake reallocations under the proposal in a manner that also is not inconsistent with SEC Regulation M.

FINRA also is proposing to limit the prohibition on the acceptance of market orders to the period prior to the commencement of secondary market trading in the IPO. Therefore, once a trading price on the secondary market has been established, members may accept market orders from customers, even on the first day of trading. FINRA believes that this revised approach strikes an appropriate balance by helping to avoid inadvertent purchases at prices that do not reflect an investor's true investment decision nor reasonable expectations, while limiting the scope and duration of the prohibition to address the pre-open entry of market orders occurring prior to the availability of last trade price information.

Definitions

FINRA is proposing to add a definition of "investment banking services" substantially similar to that found in the research rules. The proposed definition of "investment banking services" would include "acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger, acquisition or other corporate reorganization; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments or otherwise acting in furtherance of a private offering of the issuer; or serving as placement agent for the issuer."

FINRA also is proposing a definition of "IPO" to mean the "initial public offering of an issuer's equity securities, which offering is registered under the Securities Act of 1933 and as a result of which the issuer becomes a public company." The proposed definition of "public company" means "any company that is registered under Section 12 of the Securities Exchange Act of 1934 or files periodic reports pursuant to Section 15(d) thereof."

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no less than 90 and no more than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which require, among other things, 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. FINRA believes that the new, specifically targeted provisions in the proposed rule change will aid member compliance efforts and help to maintain investor confidence in the capital markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The SEC published the proposed rule change for notice and comment on December 20, 2004 and received twelve comment letters.[7] Commenters generally supported rules to address abuses in the allocation and distribution of IPOs, but expressed concerns regarding the operation of specific proposed provisions and requested clarification, as further discussed below.

Prohibition on Abusive Allocation Arrangements

Proposed Rule 5131(a) (originally proposed as NASD Rule 2712(a)) would

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] *See* Letter from Christopher J. Ailman, Chief Investment Officer, California State Teachers' Retirement System (CalSTRS), to Jonathan Katz, Secretary, SEC, dated March 27, 2006; Letter from Christianna Wood, Senior Investment Officer, CalPERS Global Equity, to Jonathan Katz, Secretary, SEC, dated March 13, 2006; Letter from Phil Angelides, California State Treasurer; Michael Fitzgerald, Iowa State Treasurer; Randall Edwards, Oregon State Treasurer; Richard Moore, North Carolina State Treasurer; Alan Hevesi, New York Comptroller; George Philip, New York State Teachers' Retirement System; and Orin S. Kramer, Chairman, New Jersey State Investment Council, to Jonathan Katz, Secretary, SEC, dated December 30, 2005; Letter from Eliot Spitzer, Attorney General, Office of the Attorney General, State of New York, to Jonathan Katz, Secretary, SEC, dated December 30, 2005; Letter from Michael Touff, Senior Vice President and General Counsel, M.D.C. Holdings (MDC), to Jonathan Katz, Secretary, SEC, dated November 1, 2005; Letter from Dixie L. Johnson, Committee Chair, Committee on Federal Regulation of Securities, Business Law Section, American Bar Association (ABA), to Jonathan Katz, Secretary, SEC, dated March 8, 2005; Letter from Edward M. Alterman, Fried, Frank, Harris, Shriver & Jacobson LLP (Fried Frank), to Jonathan Katz, Secretary, SEC, dated February 27, 2005; Letter from John Faulkner, Chairman, SIA Capital Markets Committee, Securities Industry Association (SIA), to Jonathan Katz, Secretary, SEC, dated February 15, 2005; Letter from Ross Langill, to the SEC, dated January 20, 2005; Letter from Mark G. Heesen, President, National Venture Capital Association (NVCA), to Jonathan Katz, Secretary, SEC, dated January 19, 2005; Letter from Renaissance Capital, to the SEC, dated January 18, 2005; and Letter from Dixie L. Johnson, Committee Chair, Committee on Federal Regulation of Securities, and Peter W. LaVigne, Chair, NASD Corporate Financing Rules Subcommittee, Committee on Federal Regulation of Securities, Business Law Section, American Bar Association, to Jonathan Katz, Secretary, SEC, dated January 4, 2005 (available at *http://www.sec.gov/rules/sro/nyse/nyse200412.shtml*).

prohibit a member from offering or threatening to withhold shares it allocates in an IPO as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member (*i.e.,* quid pro quo allocations). While commenters largely supported this proposal as an important safeguard against abusive activity, a few requested clarification with respect to its intended scope.

For example, one commenter requested that the proposal be limited to compensation that is "clearly excessive."[8] FINRA does not support this change and believes that the modifier "clearly" ironically makes the standard less clear as it would introduce uncertainty around what is "excessive" versus "clearly excessive." Moreover, FINRA believes that compensation that is "excessive" is the appropriate standard for establishing improper quid pro quo activities.

Commenters also requested that FINRA provide additional guidance to clarify that, in determining whether or not compensation is excessive, all the facts and circumstances surrounding the services provided will be considered including, among other things, the risk and effort involved in the transaction.[9] A commenter further noted that while some fees can easily be benchmarked, other fees may be more highly negotiated due to the more customized nature of the services provided and this should be considered in determining whether or not a fee is excessive.[10] Commenters also requested that FINRA clarify that trading fees earned from certain wash sale transactions would not be deemed excessive if entered into for a valid purpose.[11]

FINRA agrees that an assessment of whether compensation is excessive will be based upon all of the relevant facts and circumstances including, where applicable, the level of risk and effort involved in the transaction and the rates generally charged for such services. Likewise, given that a determination of what is "excessive" compensation will involve a consideration of all the relevant facts and circumstances, FINRA cannot clarify whether or not compensation for a particular wash sale transaction will be deemed excessive. While NASD (n/k/a FINRA) has stated in the Proposing Release that trading activity that serves no economic purpose other than to generate compensation for the member (such as certain wash sales) would be considered excessive, if a wash sale has an economic purpose, that factor will be considered in assessing whether the transaction has an economic purpose, and in turn whether the trading fees for such sales are excessive.[12]

Prohibition on Spinning

Proposed Rule 5131(b) (originally proposed as NASD Rule 2712(b)) would prohibit the allocation of IPO shares to an executive officer or director of a company, or to persons materially supported by such person, if the member received compensation from the company for investment banking services in the past 12 months or expects to receive or intends to seek investment banking business from the company in the next 6 months. The proposal included a rebuttable presumption that, where a firm allocates IPO shares to an executive officer or director of a company and then subsequently receives investment banking business from that company, the allocations would be deemed to have been made with the expectation or intent to receive such business. Finally, the proposed provision would prohibit allocations made on the express or implied condition that the executive officer or director, on behalf of the company, would direct future investment banking business to the member.

Commenters generally supported the adoption of a rule that would address the practice of spinning, but expressed concern that the proposal is overbroad and would lead to compliance difficulties.[13] Specifically, commenters opposed the six-month forward-looking presumption in that it would shift the burden of proof to member firms to demonstrate that a past allocation was not part of a quid pro quo arrangement for investment banking business.[14] In addition, commenters were concerned that the length of the presumption had the potential to implicate too many past IPO allocations that were unrelated to a subsequent award of investment banking business.[15] In addition, some commenters proposed that, if adopted, the six-month forward-looking period should be reduced to three months, which is the standard currently required for addressing conflicts of interest in the research analyst rules.[16]

FINRA is proposing to narrow the forward-looking window to prohibit allocations in cases where the member intends to provide, or expects to be retained by the company for, investment banking services over the next three months. FINRA believes that a three-month window, combined with the prohibition on allocations based on the express or implied condition that the member will be retained for future investment banking business as set forth in paragraph 5131(b)(3), will sufficiently addresses this conflict of interest.

In addition, FINRA has eliminated the presumption that all allocations within the prior specified period are violations of the rule. Where an executive officer or director receives an IPO allocation and the investment bank is subsequently retained for the performance of investment banking services within the three-month window by such executive officer or director's employing firm, FINRA will investigate what particular information about the business relationship was known by the firm, including a review of the communications between the broker-dealer and the investment banking client as well as the member's systems for logging and managing prospective and current client and transaction information.

FINRA also is proposing revisions to clarify that the spinning prohibition would apply to allocations to an executive officer or director of a current investment banking client of the member (in addition to companies from which the member has received investment banking compensation during the past twelve months). FINRA believes that, in all cases, allocations to executive officers and directors of existing clients should be prohibited, and that allocations should not be permitted due to the compensation schedule between the client and the member where the business relationship falls within the specified windows.

Commenters also raised concerns regarding the provision prohibiting the allocation of IPO shares to an executive officer or director on the "express or implied" condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.[17] Commenters expressed concern that the prohibition on IPO allocations based on an "implied condition" to retain the member for future investment banking business injects a level of uncertainty that may prevent members from selling IPO securities to executive officers and

[8] *See* SIA.

[9] *See* ABA and SIA.

[10] *See* SIA.

[11] *See* ABA.

[12] We note this would not affect the determination as to whether the wash sale transaction violated the anti-fraud provisions of the securities laws.

[13] *See* ABA and SIA.

[14] *See* ABA, MDC and SIA.

[15] *See* ABA.

[16] *See* SIA.

[17] *See* ABA.

directors as the result of a legitimate business relationship and, therefore, may interfere with the ability of members to allocate securities to customers.[18] FINRA does not believe that the commenters' concerns warrant a change to the proposed rule. An effective prohibition on spinning must, in FINRA's view, address express as well as implied relationships and arrangements.

Several commenters requested an exemption from the spinning provision for allocations to executive officers and directors that were directed by the issuer ("issuer-directed shares").[19] Commenters believed that, because underwriters do not control these allocations, they do not give rise to the regulatory concerns that the proposed rule change is intended to address.[20] Commenters further noted that issuers have long included their own officers and directors in directed share programs, and that it would be a dramatic departure from that practice if the final rules did not include an exception for issuer-directed shares.[21] Commenters requested that an exception be provided for allocations directed by an issuer, its affiliates or selling shareholders.[22]

FINRA believes that so long as the member has no involvement or influence, directly or indirectly, in the allocation decisions of an issuer, its affiliates or selling shareholders, allocations directed by such parties should fall outside of the spinning prohibitions. Accordingly, FINRA is adding Supplementary Material .01 to provide that the spinning prohibition would not apply to allocations of securities that are directed in writing by the issuer, its affiliates or selling shareholders, so long as the member has no involvement or influence, directly or indirectly, in the allocation decisions of the issuer, its affiliates or selling shareholders with respect to such issuer-directed shares.

Along with the carve-out for issuer-directed sharers, commenters also requested an exemption for allocations made by a separately organized investment adviser.[23] While FINRA notes that the Voluntary Initiative, in addition to exempting issuer-directed allocations, also exempted allocations directed by a separately organized investment adviser, FINRA is not proposing a similar carve-out for investment advisers. FINRA believes that the purpose of providing an exception for issuer-directed shares is to clarify that, in cases where the member is effecting an allocation made by the issuer, its affiliates or selling shareholders without the direct or indirect involvement or influence of the member, the member would not be prohibited from carrying out such directives. In contrast, where an allocation is being directed by a party other than the issuer (*e.g.,* a separately organized investment adviser), there is a higher risk that improper incentives would motivate such party's decision to allocate shares to the account of an executive officer or director of a company that falls within the purview of the proposed rule. Providing an exception for allocations by separately organized investment advisers would create a significant loophole through which the member and its affiliates may indirectly engage in the same abusive conduct the spinning rule is designed to address.

To comply with the proposed spinning provision, members would be required to determine whether an account is an "account of an executive officer or director" prior to making an allocation of IPO shares in order to avoid violating the rule. Commenters expressed concern regarding the compliance burden of tracking executive officers and directors and those materially supported by them, and requested that the rule be limited to apply only to the officers and directors themselves and immediate family members living in the same household.[24] FINRA believes that limiting the scope of the rule only to relatives residing in the same household is too narrow and could open up means of circumventing the rule. In addition, the proposed definition of "material support" is substantively similar to that found in FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings), with respect to the purchase and sale of "new issue" securities. FINRA believes that members can comply with the proposed provision by developing policies and procedures reasonably designed to identify those persons covered within the scope of the proposed rule. Therefore, FINRA believes that the appropriate scope of the rule is to reach executive officers and directors as well as those who they "materially support."

Commenters also stated that the rule should be limited to officers and directors of a U.S. public company or where the securities of the officer or director's company are principally traded in the U.S.[25] FINRA believes that the proposed prohibitions should apply to member conduct in the area prescribed, irrespective of where the recipient's company is domiciled or in what jurisdiction the securities of the recipient's company principally trade. Furthermore, spinning abuses also are possible where the recipient's company is not yet a public company, *e.g.,* companies seeking to conduct their first initial public offering are often actively solicited by member firms.[26]

In addition, in order to clarify the scope of the types of accounts to which the spinning restrictions would apply, FINRA is proposing a new defined term "account of an executive officer or director." The proposed definition would mean any account in which an executive officer or director of a company, or a person materially supported by such executive officer or director, has a financial interest or over which such executive officer, director, or materially supported person has discretion or control, other than (A) an investment company registered under the Investment Company Act of 1940 and (B) any other investment fund over which neither an executive officer, director, or materially supported person has discretion or control, provided that executive officers, directors, and materially supported persons collectively own interests representing no more than 25% of the assets of such fund. FINRA believes that the proposed exceptions for registered investment companies and any other fund in which covered persons' collective interests are limited to 25% of the fund's assets will prevent firms from indirectly allocating IPOs to executive officers and directors.

IPO Pricing and Trading Practices

Commenters generally supported the proposals related to IPO Pricing and Trading Practices; however some commenters expressed concern regarding certain provisions. Commenters argued that the notice and public disclosure requirements relating to lock-up agreements would result in a flood of meaningless information and that, therefore, at a minimum, only the release of a significant amount of shares should be required to be disclosed.[27] Commenters also requested that FINRA require notification two days prior to

[18] *See* ABA.

[19] *See* ABA, Fried Frank and SIA.

[20] *See* ABA and SIA.

[21] *See* SIA.

[22] *See* ABA and SIA.

[23] *See* ABA and SIA.

[24] *See* ABA and SIA.

[25] *See* SIA.

[26] FINRA notes, however, that the proposed new definition of an "IPO" (discussed below) is limited to the securities of a U.S. registered company.

[27] *See* ABA and SIA.

the "sale" rather than the "release" or "waiver" of a lock-up.[28]

FINRA continues to believe that public disclosure should be required for releases and waivers permitting the transfer of securities subject to a lock-up agreement, and that such disclosure should be made two business days prior to the impending release. However, FINRA is proposing to exempt from the notice and disclosure requirements releases and waivers effected solely to permit a transfer of securities that are not for consideration and where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor. Where the transfer is not for consideration and the transferee is bound by the same terms, the concerns that generally would prompt the need for disclosure under the proposal are mitigated.

Commenters requested that FINRA permit the disclosure of the required information through any method permitted under SEC Regulation FD.[29] A commenter also requested that FINRA clarify that the natural expiration of a lock-up need not be preceded by a public announcement where such expiration is disclosed in the IPO prospectus.[30]

FINRA believes that any news service used by issuers for providing public disclosure of material information pursuant to SEC Regulation FD would satisfy the proposed rule's requirement that public disclosure be made "through a major news service." FINRA also agrees that notice and public disclosure is not necessary for the natural expiration of a lock-up already disclosed in the prospectus. However, FINRA does not believe that it is necessary to make these clarifications in the rule text.

One commenter requested that FINRA clarify that the notice requirement would be fulfilled by providing an announcement to a major news organization irrespective of whether the news organization ultimately publishes the announcement.[31] FINRA believes that, as required pursuant to Regulation FD, it is important that members utilize a method (or combination of methods) of disclosure reasonably designed to provide broad, non-exclusionary distribution of the required information to the public.[32] Therefore, in announcing the required information, members are expected to select a method that is likely to result in the actual public dissemination of the specified information.

Commenters also expressed concern regarding the proposed requirements applicable to returned shares.[33] The proposal provides that the agreement between the book-running lead manager(s) and other syndicate members must require that any shares returned by a purchaser to a syndicate member after secondary market trading commences be used to (a) offset the existing syndicate short position, or (b) if no syndicate short position exists, the member must offer returned shares at the public offering price to unfilled customers' orders pursuant to a random allocation methodology. Commenters expressed concern that the proposal does not provide an alternative to address cases where the current market price is lower than the public offering price, making allocating shares to unfilled indications of interest inappropriate.[34] FINRA believes that if the current market price of returned shares is below the IPO price, then the concerns underlying the proposed rule are non-existent, as the ability to purchase at the public offering price does not confer an economic benefit. Accordingly, FINRA proposes to amend the proposed rule change to apply the returned share provisions only to shares that are trading at a premium to their IPO price.

Commenters further requested clarification regarding the requirements for returned shares. Commenters argued that certain scenarios should be exempted from the rule, including where the securities returned were the subject of a bona fide sale but the investor failed to pay for the securities.[35] FINRA disagrees and does not believe that the circumstance under which IPO shares are returned to the firm should influence whether the firm can then award them to favored customers. The proposed rule change, as amended, addresses the potential conflicts of the member in awarding a customer shares at the IPO price when they are already trading at a premium on the secondary market; the manner and circumstances surrounding the return of the shares does not alter the analysis as to how the member should proceed with a reallocation.

Commenters also raised concern that the reallocation of shares subsequent to the commencement of aftermarket trading may be considered to be new sales of securities that continue the distribution of the IPO shares with the result that members' market-making purchases in the aftermarket may be deemed to be in violation of SEC Regulation M.[36] FINRA has revised the proposed rule change to specifically address the need to comply with SEC Regulation M, and FINRA intends to work with SEC staff in applying the proposed rule change in a manner that does not conflict with Regulation M.

The proposed rule change also provides that no member may accept a market order for the purchase of IPO shares during the first day that the IPO shares commence trading on the secondary market. Commenters expressed concern that this provision would increase volatility in secondary market trading and also would be technologically cumbersome and costly for members to implement.[37] As discussed in the Proposing Release, the IPO Report noted that IPOs are inherently more volatile than stocks with a public trading history. In addition, FINRA notes that institutional investors have generally relied on limit orders for IPOs in the aftermarket. FINRA also notes that market orders may result in an investor inadvertently purchasing a security at prices that neither reflect their true investment decisions nor their reasonable expectations. Such complaints were not uncommon during the market bubble that led the IPO Advisory Committee to make this recommendation.

FINRA notes that technological advancements since the time of the initial filing have resulted in improved access to real-time price information, making it less likely that a customer's market order would result in the purchase of a security at a price that is unrelated to the customer's expectations. Thus, FINRA proposes to modify the prohibition on the acceptance of market orders to apply only to orders entered prior to the commencement of secondary market trading in an IPO. FINRA believes that this revision more precisely focuses the rule to the time posing greatest potential for investor harm.

Definitions

Commenters requested several amendments to the definitional section with respect to certain terms used in the proposal. Commenters requested that a definition of "investment banking services" be added and that such definition be based on the research analyst rules.[38] In response to comments, FINRA is proposing to add a

[28] *See generally* ABA and SIA.

[29] *See* ABA and SIA.

[30] *See* SIA.

[31] *See* SIA.

[32] *See* 17 CFR § 234.101(e)(2).

[33] *See* ABA and SIA.

[34] *See* ABA and SIA.

[35] *See* ABA and SIA.

[36] *See* ABA.

[37] *See* SIA.

[38] *See* ABA and SIA.

definition of "investment banking services" that is substantially similar to that found in the research rules. The proposed definition of "investment banking services" would include "acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger, acquisition or other corporate reorganization; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments or otherwise acting in furtherance of a private offering of the issuer; or serving as placement agent for the issuer."

One commenter requested that, if a definition of "investment banking services" were adopted, it should be limited to U.S. registered offerings.[39] FINRA disagrees that the proposed rule should permit abusive IPO allocation arrangements in exchange for compensation for investment banking services in an overseas transaction (which may involve an affiliate of the U.S. member). In such cases, the same or similar potential conflicts of interest and problematic incentives apply both for the member as well as for the executive officers and directors and should not be permitted.

Commenters supported the addition of definitions for the terms "initial public offering" and "public company."[40] In response to comments, FINRA is proposing to add a definition of "IPO" to mean the "initial public offering of an issuer's equity securities, which offering is registered under the Securities Act of 1933 and as a result of which the issuer becomes a public company." The proposed definition of "public company" means "any company that is registered under Section 12 of the Securities Exchange Act of 1934 or files periodic reports pursuant to Section 15(d) thereof." These proposed definitions are identical in scope to the corresponding definitions found in the Voluntary Initiative.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Additional Comment

We seek specific comment on whether there are any alternatives to the proposed rule change that FINRA should consider, such as whether proposed new Rule 5131(b)'s spinning provision should be modified to include a mandatory ban prohibiting members from seeking or providing investment banking services to a company for a period of 12 months following any allocation of IPO shares to an account of an executive officer or director of such company and whether such a ban would facilitate compliance.

V. 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–NASD–2003–140 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–NASD–2003–140. 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–NASD–2003–140 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5913 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

[39] *See* ABA.

[40] *See generally* ABA and SIA.

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61689; File No. SR–NYSEArca–2010–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of the One Fund Under NYSE Arca Equities Rule 8.600

March 11, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 2, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): One Fund, a series of the U.S. One Trust. The text of the proposed rule change is available at the Exchange, the

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission's Public Reference Room, and *http://www.nyx.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 list and trade the following Managed Fund Shares [4] ("Shares") under NYSE Arca Equities Rule 8.600: One Fund (the "Fund"), a series of the U.S. One Trust (the "Trust").[5] The Fund is a "fund of funds," which means that the Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under Investment Company Act of 1940 ("1940 Act") ("Underlying ETFs").[6]

U.S. One, Inc. (the "Adviser") is the adviser for the Fund.[7] The Adviser is not affiliated with a broker-dealer.[8] If the Adviser becomes affiliated with a broker-dealer, the Adviser would be required to comply with the "fire wall" provisions contained in Commentary .07 to NYSE Arca Equities Rule 8.600. PNC Global Investment Servicing, Inc. serves as the custodian, transfer agent and administrator for the Fund.

According to the Registration Statement, the Fund's investment objective is to seek long-term capital appreciation. In pursuing its investment objective, the Adviser will normally invest at least 80% of its total assets in Underlying ETFs. The Adviser invests in Underlying ETFs that track various securities indices comprised of large, mid and small capitalization companies in the United States, Europe and Asia, as well as other developed and emerging markets.

The Adviser employs an asset allocation strategy focused on increasing shareholder return and reducing risk through exposure to a variety of domestic and foreign market segments. The Adviser's asset allocation strategy pre-determines a target mix of investment types for the Fund to achieve its investment objective and then implements the strategy by selecting securities that best represent each of the desired investment types. The strategy also calls for periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the target mix and indicates purchases and sales necessary to return to the target mix. The Fund may change its investment objective without shareholder approval, upon 60 days' notice to shareholders.

The Adviser intends to hold Underlying ETFs that hold equity securities of large, mid and small capitalization companies in the United States, as well as other developed countries and developing countries, and that give the Fund exposure to most major developed and developing markets around the world. While the Fund intends to primarily invest in Underlying ETFs that hold equity securities, the Adviser may also invest in Underlying ETFs that may hold U.S. and foreign government debt and investment grade corporate bonds. There is no limit on the percentage of Fund assets that may be invested in securities of foreign issuers, including in securities of emerging market issuers, through Underlying ETFs.

The Adviser selects Underlying ETFs based on their ability to accurately represent the underlying stock market to which the Adviser seeks exposure for the Fund, and seeks to construct a portfolio that will outperform its benchmark, the S&P 500 Index. Additionally, the Adviser seeks to maintain a low after-tax cost structure for the Fund and, therefore, also evaluates ETFs based on their

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[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges ("UTP") of the following actively managed funds under Rule 8.600: Securities Exchange Act Release Nos. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR–NYSEArca–2008–28) (order approving trading pursuant to UTP of Bear Stearns Active ETF); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving listing of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving listing t [sic] of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca–2009–74 (order approving listing of four Grail Advisors RP ETFs); 60981 (November 10, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 60975 (November 10, 2009) (SR–NYSEArca–2009–83) (order approving listing of Grail American Beacon International Equity ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

[6] The Trust is registered under the 1940 Act. On February 5, 2010, the Trust filed with the Commission Amendment No. 2 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–160877 and 811–22320) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

[7] The Exchange represents that the Adviser, as the investment adviser of the Fund, and its related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

underlying costs. The Adviser employs a buy and hold strategy, meaning that it buys and holds securities for a long period of time, with minimal portfolio turnover. The Fund, using a buy and hold strategy, seeks to achieve its investment objective through investment in Underlying ETFs that track certain securities indices.

According to the Registration Statement, the Fund does not invest in derivatives. The Underlying ETFs in which the Fund invests may, to a limited extent, invest in dervatives; however, the Fund will not invest in an Underlying ETF that uses derivatives as a principal investment strategy.

According to the Registration Statement, in addition to the principal investments and strategies described in the Registration Statement, the Fund may also, to a lesser extent, use other strategies, and engage in other investment practices.

The Fund generally will remain fully invested in the Underlying ETFs. However, the Fund may, to a limited extent, also invest its other assets in securities not included in the indices tracked by the Underlying ETFs, but which the Adviser believes will help the Fund stay fully invested and reduce transaction costs. As non-principal strategies, the Fund may invest in debt and other equity securities, cash and cash equivalents or other money market instruments, including shares of money market mutual funds and repurchase agreements.

The Fund or its Underlying ETFs may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. The Fund and its Underlying ETFs may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The Fund or the Underlying ETFs may invest in short-term instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. The Fund or the Underlying ETFs may invest in short-term instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons.

Underlying ETFs may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. To the extent an Underlying ETF uses futures and/or options on futures, it will do so in accordance with Rule 4.5 under the Commodity Exchange Act ("CEA").[9]

Underlying ETFs may trade put and call options on securities, securities indices and currencies; may enter into swap agreements, including, but not limited to, equity index swaps and interest rate swap agreements, in an attempt to gain exposure to the stocks making up an index of securities in a market without actually purchasing those stocks, or to hedge a position; may buy and sell stock index futures contracts with respect to any stock index traded on a recognized stock exchange or board of trade; may invest in complex securities such as equity options, index options, repurchase agreements, foreign currency contracts, hedges and swaps, and futures contracts; and may invest in exchange-traded notes.

According to the Registration Statement, the Fund may take advantage of opportunities in other investments which are not presently contemplated for use by the Fund or which are not currently available but which may be developed, to the extent such opportunities are both consistent with the Fund's investment objective and legally permissible for the Fund. Before entering into such transactions or making any such investment, the Fund will provide appropriate disclosure.

The Trust has adopted the following investment restrictions as fundamental policies with respect to the Fund. These restrictions cannot be changed with respect to the Fund without the approval of the holders of a majority of the Fund's outstanding voting securities. Except with the approval of a majority of the outstanding voting securities, the Fund may not:

1. (a) With respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (b) acquire more than 10% of the outstanding voting securities of any one issuer.[10]

2. Invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. For purposes of this restriction, the Fund will aggregate the portfolio holdings of the Underlying ETFs so that the Fund will not have indirectly invested more than 25% of its assets in a particular industry or group of industries.

In addition to the investment restrictions adopted as fundamental policies set forth above, the Fund will not hold illiquid assets in excess of 15% of its net assets.[11] An illiquid asset is any asset which may not be sold or disposed of in the ordinary course of business within seven days at approximately the value at which the Fund has valued the investment.

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.[12]

Underlying ETFs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETFs may hold non-U.S. equity securities, the Fund will not invest in non-U.S. equity securities.

The Fund offers and issues Shares at their net asset value ("NAV") only in aggregations of a specified number of Shares (each, a "Creation Unit"). The Fund generally offers and issues Shares in exchange for shares of specified Underlying ETFs ("Deposit Securities") together with the deposit of a specified cash payment ("Cash Component"). The Trust reserves the right to permit or require the substitution of a "cash in

[9] 7 U.S.C. 1.

[10] This diversification standard is contained in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[11] This restriction may be changed without a shareholder vote.

[12] According to the Registration Statement, one of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (the "90% Test"). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership (the "Asset Test").

lieu" amount to be added to the Cash Component to replace any Deposit Security. The Shares are redeemable only in Creation Unit aggregations, and generally in exchange for portfolio securities and a specified cash payment. A Creation Unit of the Fund consists of 50,000 Shares.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [13] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information: The Fund's Web site (*http://www.onefund.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[14] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[15] The Web site information will be publicly available at no charge.

On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange ("NYSE") via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts: With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[16] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules: The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance: The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of

[13] 17 CFR 240.10A–3.

[14] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[15] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[16] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG.[17]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin: Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[18] that an exchange have rules that are 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, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–12 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–NYSEArca–2010–12. 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–12 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5912 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

[17] For a list of the current members of ISG, *see http://www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61686; File No. SR–Phlx–2010–41]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

March 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule to: (i) Increase the number of options to be included in the Exchange's current schedule of transaction fees and rebates for adding and removing liquidity; (ii) increase the Firm per contract transaction fee for adding liquidity; and (iii) other clarifying technical amendments to the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after March 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

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 increase liquidity and to attract order flow by increasing the number of options to be included in the Exchange's current schedule of transaction fees and rebates for adding and removing liquidity.

Specifically, the Exchange proposes to add the following options: Apple, Inc. (AAPL); Allstate Corp., (ALL), Amazon.com, Inc. ("AMZN"), Bank of America Corporation ("BAC"); Dell, Inc. ("DELL"), Diamonds Trust Series 1 ("DIA"), DryShips, Inc. ("DRYS"), Eastman Kodak, Co. ("EK"), Market Vectors Gold Miners ETF ("GDX"), General Electric Company ("GE"), Goldman Sachs Group, Inc. ("GS"), Microsoft Corporation ("MSFT"), Qualcomm, Inc. ("QCOM"), Research In Motion Ltd. ("RIMM"), Starbucks Corp. ("SBUX"), UltraShort Financials ProShares ("SKF"), iShares Silver Trust ("SLV"), Semiconductor HOLDRs ("SMH"), United States Natural Gas ("UNG"), United States Oil Fund LP Units ("USO"), Ultra Financials ProShares ("UYG"), WynnResorts Ltd. ("WYNN"), and Financial Select Sector SPDR ("XLF"), collectively ("the options"). The options would be subject to the fees and rebates for adding and removing liquidity.

Additionally, the Exchange proposes to increase the fee for adding liquidity assessed to Firms from its current rate of $0.35 to $0.45. The Exchange is amending this rate to equate it to the rate assessed on Broker-Dealers for adding liquidity.

Currently, the Exchange assesses a per-contract transaction charge in Standard and Poor's Depositary Receipts/SPDRs ("SPY")[5], the PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C") options on five different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange. The per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.[6]

The market participants are as follows: (i) Specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs")[7] and Remote Streaming Quote Traders ("RSQTs");[8] (ii) customers;[9] (iii) specialists, ROTs [sic], SQTs and RSQTs that receive Directed Orders ("Directed Participants"[10] or "Directed Specialists, RSQTs, or SQTs"[11]); (iv) Firms; and (v) broker-dealers.

The per-contract transaction charges are assessed on participants who submit proprietary quotes and/or orders that remove liquidity from the Exchange's market in options listed on the Fee Schedule. The Exchange also assesses a transaction charge to Firms and broker-dealers that add liquidity.

Additionally, the Exchange has in place a per-contract rebate relating to transaction charges for orders or quotations that add liquidity to the Exchange's market in options listed on the fee schedule. The amount of the rebate depends on the category of

[5] SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

[6] *See* SR–Phlx–2010–33.

[7] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[8] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[9] This applies to all customer orders, directed and non-directed.

[10] For purposes of this fee, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on the Exchange's electronic trading platform for options, PHLX XL II.

[11] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

participant whose order or quote was executed as part of the Phlx disseminated Best Bid and/or Offer.

The Exchange also proposes to amend the Fee Schedule to make technical amendments such as changing the name of the category of fees and other clarifying amendments to make reference to other fees, and to options affected by these fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity). The rate increase to Firms for adding liquidity in the various symbols including the additional Symbols is the same rate that is currently being assessed on Broker-Dealers.

Accordingly, the Exchange also believes that the addition of the options to this portion of the Fee Schedule is equitable in that it will apply to all categories of participants in the same manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and paragraph (f)(2) of Rule 19b–4 [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–41. 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–2010–41 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5911 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61685; File No. SR–Phlx–2010–39]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Certain Exchange Fees

March 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (i) Increase the options transaction charge for Registered Options Traders ("ROTs") and Specialists to $.22; (ii) increase the Options Surcharge in options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT"), options on the one-tenth value Russell 2000® Index [5]

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived

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(the "Reduced Value Russell Index" or "RMN"), options on the Nasdaq 100 Index[6] traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") to $.15 for ROTs, Specialists, Firms and Broker-Dealers; (iii) amend its Monthly Cap on equity options transaction fees to $650,000; (iv) amend the Firm Related Equity Option Cap to $75,000; (v) increase the U.S. Dollar-Settled Foreign Currency Options transaction charges to $.30 per contract; and (vi) increase the Real-Time Risk Management Fee to $.003 per contract.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after March 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room and on the Commission's Web site at *http://www.sec.gov.*

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

Generally, the purpose of the proposed rule change is to update the Exchange's Fee Schedule by amending existing fees. The Exchange believes that the increases are necessary for the Exchange to remain competitive.

Equity Options Fees

The Exchange proposes increasing the options transaction charge for Registered Options Traders ("ROTs") and specialists to $.22. Currently, the Exchange assesses a per contract fee of $.21 on ROTs (on-floor) and specialists.[7] The Exchange also proposes amending the Options Surcharge in RUT, RMN, MNX and NDX to increase the current fee of $.10 per contract to $.15 per contract for ROTs (on-floor), specialists, Firms and Broker-Dealers.

The Exchange proposes to decrease the current Monthly Cap on equity options transactions from $750,000 to $650,000. The Monthly Cap is currently applicable to ROTs[8] and specialists.[9] The Exchange believes that by reducing the Monthly Cap, a greater number of members may benefit from the Monthly Cap and the Exchange will attract additional order flow.[10]

The Exchange also proposes to decrease the Firm Related Equity Option Cap from $85,000 to $75,000 per month. The Exchange recently increased the Firm Related Equity Option Cap.[11] Similarly, the Exchange believes that by reducing the Firm Related Equity Option Cap additional members will benefit from the cap.[12]

U.S. Dollar-Settled Foreign Currency Option Fees

The Exchange proposes to increase the Options Transaction Charge in U.S. Dollar-Settled Foreign Currency Options Fees for ROTs (on-floor), specialists and Firms from $.24 to $.30.

Real-Time Risk Management Fee

The Exchange proposes to increase the Real-Time Risk Management Fee to $.003 per contract. The current fee is $.0025 per contract. This fee is assessed on members who receive information on a real-time basis.

The proposed changes to the Fee Schedule will be effective for transactions settling on or after March 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes the increases to the Equity Options Fees are equitable in that ROTs, specialists, Firms and Broker Dealers will be charged the same rate with respect to the Options Surcharge. The increase to the Options Transaction Charge for ROTs and specialists is offset by other amendments to reduce caps. The Exchange believes that members will benefit from the reduced Monthly Cap and Firm Related Equity Option Cap. The amendments to the U.S. Dollar-Settled Foreign Currency Options Fees are consistent for ROTs (on-floor), Specialists and Firms. Also, the Real-Time Risk Management fee will apply to all members alike.

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.

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from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

[6] NASDAQ(R), NASDAQ–100(R) and NASDAQ–100 Index(R) are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the "Corporations") and are licensed for use by NASDAQ OMX PHLX, Inc. in connection with the trading of options products based on the NASDAQ–100 Index(R). The options products have not been passed on by the Corporations as to their legality or suitability. The options products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the options products.

[7] This fee is subject to a Monthly Cap of $750,000.

[8] A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account.

[9] This Monthly Cap is not applicable to electronic trading in Standard and Poor's Depositary Receipts/SPDRs ("SPY"), PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C").

[10] The Exchange recently amended the calculation of the Monthly Cap by aggregating the trading activity of separate ROTs and specialist member organizations if there is at least 75% common ownership between the member organizations as reflected on each member organizations' Form BD, Schedule A. *See* Securities Exchange Act Release N. 61558 (February 22, 2010) (SR–Phlx–2010–16).

[11] *See* SR–Phlx–2010–25.

[12] This Firm Related Equity Option Cap is not applicable to electronic trading in Standard and Poor's Depositary Receipts/SPDRs ("SPY"), PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C").

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

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 [15] and paragraph (f)(2) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–39. 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–2010–39 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5910 Filed 3–17–10; 8:45 am]

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

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61684; File No. SR–Phlx-2010–33]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

March 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by the Exchange. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule by adopting per contract transaction fees for options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY"), [5] the PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C"). The fees would apply to: (i) Transaction sides that remove liquidity from the Exchange's disseminated market, and (ii) Firm and broker-dealer quotes and orders that are included in the Exchange's disseminated market.

Additionally, the Exchange proposes to offer a transaction rebate to certain liquidity providers, as described more fully below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 proposed rule change is to increase liquidity and to attract order flow in SPY, QQQQ, IWM and C options on the Exchange.

Transaction Charges for Removing Liquidity:

The Exchange proposes to assess a per-contract transaction charge in SPY, QQQQ, IWM and C options on five different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange. The per-contract transaction charge would depend on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The proposed amendments to the Exchange's Fee Schedule would break

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

down market participants by the following five categories: (i) Specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs")[6] and Remote Streaming Quote Traders ("RSQTs");[7] (ii) customers;[8] (iii) specialists, ROTs [sic], SQTs and RSQTs that receive Directed Orders ("Directed Participants" or "Directed Specialists, RSQTs, or SQTs";[9]) (iv) Firms; and (v) broker-dealers. For purposes of this fee, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

The per-contract transaction charges to be assessed on participants who submit proprietary quotes and/or orders that remove liquidity in SPY, QQQQ, IWM and C options from the Exchange in SPY, QQQQ, IWM and C options are, by category:

Category	Rebate (per contract)
Specialist, ROT, SQT, RSQT	$0.32
Customer	0.25
Directed Participants	0.30
Firms	0.45
Broker-Dealers	0.45

Transaction Charges for Adding Liquidity:

The Exchange proposes to assess a transaction charge of $0.35 per contract to Firms and $0.45 per contract to broker-dealers that add liquidity.

Rebates:

In order to promote and encourage liquidity in SPY, QQQQ, IWM and C options, the Exchange proposes to amend its fee schedule to include a per-contract rebate relating to transaction charges for orders or quotations that add liquidity in SPY, QQQQ, IWM and C options. The amount of the rebate would depend on the category of participant whose order or quote was executed as part of the Phlx Best Bid and Offer. Specifically, the per-contract rebates are, by category:

Category	Charge (per contract)
Specialist, ROT, SQT, RSQT	$0.23
Customer	0.20
Directed Participants	0.25
Firms	N/A
Broker-Dealers	N/A

Applicability of Other Fees:

• The Monthly Cap that is currently applicable to ROTs and specialists transacting equity options will not be applicable to the fees described herein.[10]

• The Firm Related Equity Option Cap will not be applicable to the fees described herein.[11]

• The Exchange pays a per-contract Market Access Provider ("MAP") Subsidy to any Exchange member organization that qualifies as an Eligible MAP.[12] The MAP Subsidy will not apply to electronic transactions in SPY, QQQQ, IWM and C.[13]

• Payment for Order Flow fees[14] will not be collected on transactions in SPY, QQQQ, IWM and C options.

• All electronic auctions will be free to Customers, Directed Participants, Specialists, ROTs, SQTs and RSQTs.[15] Electronic auctions include, without limitation, the Complex Order Live Auction ("COLA"),[16] and Quote and Market Exhaust auctions.[17] Firms and broker-dealers will be assessed the appropriate charge for removing liquidity.

• The fees described herein will not apply to contracts executed during the Exchange's opening process.[18] Firms and broker-dealers will be assessed the appropriate charge for removing liquidity.

• The Exchange pays an Options Floor Broker Subsidy to member organizations with Exchange registered Floor Brokers for eligible contracts that are entered into the Exchange's Options Floor Broker Management System. The Options Floor Broker Subsidy will be applicable to the transactions described herein.[19]

• The Exchange assesses a Cancellation Fee of $2.10 per order on member organizations for each cancelled electronically delivered customer order in excess of the number of customer orders executed on the Exchange by that member organization in a given month.[20] The Cancellation Fee will continue to apply.

• Regular Equity Option transaction fees will apply to Complex Orders that are electronically executed against a contra-side order with the same Complex Order Strategy.

• Single contra-side orders that are executed against the individual components of Complex Orders will be charged under the proposed Fee Schedule. The individual components of such a Complex Order will not be charged.

• SPY, QQQQ, IWM and C transactions executed via open outcry will be subject to the standard equity options fee schedule. However, if one side of the transaction is executed using the Options Floor Broker Management System[21] and any other side of the trade

[6] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange-approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[8] This applies to all customer orders, directed and non-directed.

[9] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[10] *See* Securities and Exchange Release No. 61529 (February 17, 2010) (SR–Phlx-2010–17). [sic]

[11] *See* SR–Phlx-2010–25.

[12] An "Eligible MAP" is defined in the Exchange's Fee Schedule in the Market Access Provider Subsidy.

[13] *See* Securities Exchange Act Release No. 59537 (March 9, 2009), 74 FR 11151 (March 16, 2009) (SR–Phlx-2009–19).

[14] *See* Securities Exchange Act Release No. 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx-2009–38).

[15] With respect to electronic auctions, it is systemically difficult to determine which participant(s) would qualify for a rebate, therefore the Exchange has determined not to apply the rebate to transactions resulting from electronic auctions.

[16] COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO. *See* Exchange Rule 1080.

[17] Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust auction for the initiating order. Under Market Exhaust, any order volume that is routed to away markets will be marked as an Intermarket Sweep Order or "ISO." *See* Exchange Rule 1082.

[18] *See* Exchange Rule 1017.

[19] *See* Securities Exchange Act Release No. 60578 (August 27, 2009), 74 FR 45666 (September 3, 2009) (SR–Phlx-2009–72).

[20] *See* Securities Exchange Act Release No. 60188 (June 29, 2009), 74 FR 32986 (July 9, 2009) (SR–Phlx-2009–48).

[21] The Options Floor Broker Management System ("FBMS") is a component of the Exchange's system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trial provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial

was the result of an electronically submitted order or a quote, then the fees proposed herein will apply to the FBMS contracts and contracts that are executed electronically on all sides of the transaction.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [22] in general, and furthers the objectives of Section 6(b)(4) of the Act [23] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity).

Specifically, the Exchange believes that its proposal is consistent with the current fee schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.[24]

Order flow providers that control customer order flow and route customer orders to exchanges are responsible to obtain the best pricing available for their customers. An order flow provider has the ability to enter into arrangements whereby they may receive consideration for directing the customer order to a specific market maker (specialists, ROTs [sic], SQTs and/or RSQTs).

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges for options overlying SPY, QQQQ, IWM and C remain competitive with fees charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

execution, or cancellation of that order. AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. *See* Exchange Rule 1080, Commentary .06.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(4).

[24] NYSE Amex currently charges different rates to different market participants in assessing its firm facilitation fee. [sic] *See* Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR–NYSEAmex-2009–38).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [25] and paragraph (f)(2) of Rule 19b–4 [26] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2010–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2010–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx-2010–33 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5909 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61676; File No. SR–CBOE–2010–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to FLEX Option Pilots

March 9, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2010, Chicago Board Options Exchange, Incorporated (the "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 has designated the proposed rule change as constituting a non-controversial rule change under

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

[2] 17 CFR 240.19b–4.

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 Substance of the Proposed Rule Change

The Exchange proposes to make a technical amendment to its rules regarding permissible exercise settlement values and minimum value sizes for Flexible Exchange Options ("FLEX Options") to insert the specific conclusion date for two pilot programs. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved CBOE's proposal to modify the permissible exercise settlement values for FLEX Index Options and to eliminate the minimum value sizes for all FLEX Options under two 14-month pilot programs.[4] The purpose of this rule change is solely to amend the rule text to insert the specific conclusion date of the respective pilot programs, which is March 28, 2011.[5]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to update the text to reflect the actual expiration date of the respective pilots in a matter that is consistent with the original approval of the pilot programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[10] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow CBOE to amend the relevant rule text to immediately reflect the actual conclusion dates of the pilot programs, and therefore the Commission deems the proposal effective upon filing.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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–2010–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–026. 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

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (approving SR–CBOE–2009–087).

[5] Previously the rule text indicated that the Exchange would insert the date 14 months from approval, which approval occurred on January 28, 2010. *Id.*

[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). The Commission notes that the Exchange has met this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[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).

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–2010–026 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5907 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61675; File No. SR–ISE–2010–17]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Fees for the Block Order Mechanism

March 9, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 1, 2010, 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 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 ISE proposes to adopt a fee for certain customer orders executed in the Exchange's Block Order Mechanism. 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

On October 1, 2009, the Exchange implemented a new order type, Professional Orders,[3] and adopted a $0.20 per contract fee for Professional Orders for their crossing activity, i.e., their interaction in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms.[4] ISE adopted this fee on the belief that trading in the Exchange's crossing order mechanisms is primarily activity that is conducted by broker-dealers and thus it is reasonable for the Exchange to charge non-broker-dealer orders that conduct a Professional Order business the same fee the Exchange charges broker-dealer orders. ISE now proposes to adopt a similar $0.20 per contract fee for Professional Orders that interact in the Exchange's Block Order Mechanism. The Exchange believes that executing orders in the Block Order Mechanism is also characteristic of professional traders and thus should be subject to a fee.

2. Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed rule change will allow the Exchange to charge a similar fee to both broker-dealer orders and certain non-broker-dealer orders that interact in the Exchange's Block Order Mechanism.

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[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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–ISE–2010–17 on the subject line.

[12] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] A "Professional Order" is defined by the Exchange to mean an order that is for the account of a person or entity that is not a Priority Customer. A "Priority Customer" is defined by the Exchange to mean a person or entity that is (i) not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[4] *See* Exchange Act Release No. 60861 (October 22, 2009), 74 FR 55872 (October 29, 2009).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

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

[8] 17 CFR 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–17. 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 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, 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–ISE–2010–17 and should be submitted by April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5906 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61683; File No. SR–NYSEArca–2010–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of HTE Global Relative Value ETF

March 10, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 25, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 list and trade the following Managed Fund Shares[4] ("Shares") under NYSE Arca Equities Rule 8.600: HTE Global Relative Value ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[5] ("Shares") under NYSE Arca Equities Rule 8.600: HTE Global Relative Value ETF (the "Fund").[6] The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[7]

HTE Global Relative Value ETF

The investment advisor to the Fund is AdvisorShares Investments, LLC (the "Advisor"). HTE Asset Management, LLC is the sub-advisor to the Fund ("Sub-Advisor"). Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon is the administrator, transfer agent and custodian for the Fund.

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser

[9] 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] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. *See* Securities Exchange Act Release Nos. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (order approving Rule 8.600 and Exchange listing and trading of PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca–2009–74 (order approving listing of four Grail Advisors RP ETFs); 60975 (November 10, 2009), 74 FR 59590 (November 18, 2009) (SR–NYSEArca–2009–83) (order approving listing of Grail American Beacon International Equity ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

[7] The Trust is registered under the 1940 Act. On December 29, 2009, the Trust filed with the Commission Post-Effective Amendment No. 2 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) relating to the Fund (File Nos. 333–157876 and 811–22110) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[8] In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Advisor and Sub-Advisor are not affiliated with a broker-dealer.[9] Any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

According to the Registration Statement, the investment goal of the Fund is average annual returns in excess of the total return of the MSCI World Index (the "Index"), with comparable volatility and little to no correlation with the Index.

The Fund is considered a "fund-of-funds" that seeks to achieve its investment objective by primarily investing in both long and short positions in other exchange-traded funds[10] (the "Underlying ETFs") that offer diversified exposure to global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and other exchange-traded products, including but not limited to exchange-traded notes ("ETNs"), exchange-traded currency trusts and closed-end funds. In addition, the Fund may use liquid futures contracts tied to broad market indices (*e.g.,* futures contracts based on the S&P 500 Index, the MSCI EAFE Index and/or the MSCI Emerging Markets Index) when establishing net long or net short exposure on top of the core long/short portfolio.[11] According to the Registration Statement, the Underlying ETFs in which the Fund will invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index.

The Sub-Advisor seeks to achieve the Fund's investment objective by taking long positions in the Underlying ETFs that invest in what it believes to be the most relatively attractive global regions and countries within those regions, and by establishing an equivalent dollar amount of short positions in the Underlying ETFs that invest in what it believes to be the most relatively unattractive global regions and countries within those regions. By maintaining a core portfolio construction of equal long and short dollar exposure, the Sub-Advisor seeks to minimize the influence of directional trends and market exposure ("beta"), and instead seeks to profit from the relative performance between long and short positions in global regions, countries, styles or sectors. From time-to-time, the Sub-Advisor may also add directional exposure of up to 50% net long or net short exposure on top of its core long/short portfolio. In doing so, the Sub-Advisor seeks to generate additional profits for the Fund by being net long when stock markets are rising and net short when markets are falling.

The Fund may invest in futures and options on futures contracts. The Fund will reduce the risk that it will be unable to close out a futures contract by only entering into futures contracts that are traded on a national futures exchange regulated by the Commodity Futures Trading Commission ("CFTC"). To the extent the Fund uses futures and/or options on futures, it will do so in accordance with Rule 4.5 under the Commodity Exchange Act ("CEA"). According to the Registration Statement, the Trust, on behalf of all of its series, including the Fund, has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with Rule 4.5 and, therefore, the Fund is not subject to registration or regulation as a commodity pool operator under the CEA.

According to the Registration Statement, while the Fund does not anticipate doing so, the Fund may purchase or hold illiquid securities, including securities that are not readily marketable and securities that are not registered ("restricted securities") under the 1933 Act, but which can be offered and sold to "qualified institutional buyers" under Rule 144A under the 1933 Act. The Fund will not invest more than 15% of the Fund's net assets in illiquid securities. If the percentage of the Fund's net assets invested in illiquid securities exceeds 15% due to market activity, the Fund will take appropriate measures to reduce its holdings of illiquid securities. The term "illiquid securities" for this purpose means securities that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities.[12]

The Fund may enter into repurchase agreements with financial institutions; may enter into reverse repurchase agreements as referenced in the Registration Statement; [13] may engage in

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[9] The Exchange represents that AdvisorShares Investments, LLC, as the investment adviser of the Funds, and HTE Asset Management, LLC as the Sub-Advisor, and their respective related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] The Fund's investment in Underlying ETFs will be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the SEC or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986.

[11] The Registration Statement states that the Fund may use futures contracts and related options for *bona fide* hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes.

[12] This 15% investment limitation is a non-fundamental policy of the Fund and may be changed with respect to the Fund by the Board.

[13] According to the Registration Statement, reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price. Generally, the effect of such a transaction is that the Fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while the Fund will be able to keep the interest income associated with

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short sales transactions; may buy and sell stock index futures contracts with respect to any stock index traded on a recognized stock exchange or board of trade; may purchase and write put and call options on indices and enter into related closing transactions; may enter into swap agreements, including, but not limited to, equity index swaps and interest rate swap agreements; may utilize swap agreements in an attempt to gain exposure to the stocks making up an index of securities in a market without actually purchasing those stocks, or to hedge a position; may purchase securities on a when-issued or delayed-delivery basis; and may invest in U.S. Treasury zero-coupon bonds. The Fund, or the ETFs in which it invests, may invest in U.S. government securities.

To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality short-term debt securities and money market instruments. The Fund may be invested in these instruments for extended periods, depending on the Sub-Advisor's assessment of market conditions. These short-term debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities and repurchase agreements.

The Fund is subject to the following investment limitations that are fundamental policies and may not be changed without the vote of a majority of the outstanding voting securities of the Fund:

Diversification. The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.[14]

Concentration. The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [15] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

The Underlying ETFs will be traded on a U.S. national securities exchange.[16] Except for Underlying ETFs that may hold non-US issues, the Fund will not otherwise invest in non-US issues.

Creations and Redemptions of Shares

The Trust issues and sells Shares of the Fund only in Creation Units of 25,000 Shares on a continuous basis through the Distributor, at their NAV next determined after receipt, on any Business Day (as defined in the Registration Statement). The consideration for purchase of a Creation Unit of the Fund generally consists of an in-kind deposit of a designated portfolio of securities—the "Deposit Securities"—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash—the Cash Component—computed as described in the Registration Statement. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. Creations and redemption of Shares may be effected only by Authorized Participants, as defined in the Registration Statement.[17]

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a Business Day. The Trust will not redeem shares in amounts less than Creation Units.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities—as announced by the Administrator on the Business Day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

Availability of Information

The Fund's Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[18] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[19]

On a daily basis, for each portfolio security of the Fund, the Fund will

those portfolio securities. Such transactions are advantageous only if the interest cost to the Fund of the reverse repurchase transaction is less than the cost of obtaining the cash otherwise.

[14] This diversification standard is contained in Section 5(b)(1) of the 1940 Act.

[15] 17 CFR 240.10A–3.

[16] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Geoffrey C. Pemble, Special Counsel, Commission, dated March 10, 2010.

[17] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

[18] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[19] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

disclose on its Web site the following information: Ticker symbol, name of security, number of shares held in the portfolio, and percentage weighting of the security in the portfolio. On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange ("NYSE") via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund. The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov.* Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[20] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement.[21]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

[20] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[21] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[22] that an exchange have rules that are 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, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–10 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5908 Filed 3–17–10; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78f(b)(5).

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6923]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The Indonesia English Language Study Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A/E/EAP–2010–IELSP.

Catalog of Federal Domestic Assistance Number: 19.009.

Key Dates: June 2010–March 2012.

Application Deadline: April 29, 2010.

Executive Summary

The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the FY2010 *Indonesia English Language Study Program.* ECA welcomes applications from public and private non-profit organizations or consortia of organizations including accredited post-secondary educational institutions in the United States meeting the provisions described in Internal Revenue Code Section 26 U.S.C. 501(c)(3) in the United States (*see* Eligibility Information, section III). The grant recipient will administer and manage this initiative, which over the period of one year will enroll approximately 150 Indonesian undergraduate students in one eight-week intensive English language course each at a U.S. college or university and provide participants with an introduction to American institutions, society and culture. The grant recipient will be expected to identify the participating colleges and universities that will host students in groups of no more than 20 at a time. It is anticipated that the total amount of funding for FY2010 administrative and program costs will be $1,443,000. ECA reserves the right to reduce, revise, or increase the proposed budget in accordance with funding availability and the needs of the program.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests,

developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Purpose

Since the inception of the Indonesia English Language Study Program in FY2007, this program has brought over 350 Indonesian undergraduates to the United States to attend eight-week long, intensive English study courses at colleges and universities across the country. The intent of this program is to increase the English language capability of Indonesian undergraduate students and to provide them with a substantive U.S. exchange experience. Many of the participants may wish to return to the U.S. at a future date for graduate study; will eventually seek careers in Indonesia as teachers of English at the school and university level; or may become entrepreneurs, scientists, government officials, leaders within the Indonesian NGO community, or hold other positions of influence.

Overview

The program will consist of a series of approximately eight eight-week programs. Each of these programs will be limited to 20 participants and should offer intensive English language training, including English for Academic Purposes, as well as the development of general reading, writing, speaking and listening skills, and the testing of those skills.

Applicant organizations should identify a partner organization in Indonesia with the capacity to advertise, recruit, screen and assist in the selection of the program's participants as part of a nationwide, merit-based, transparent competition. Both the applicant organization and its Indonesia partner will be expected to work closely with the Public Affairs Section (PAS) of the U.S. Embassy in Jakarta and with other Indonesian organizations identified by PAS Jakarta, including government ministries, on this aspect of the project. It is expected that approximately half the participants will come from institutions of higher education that are administered by the Ministry of National Education, and half from institutions administered by the Ministry of Religious Affairs. In recruiting participants, efforts should be made to seek students from non-elite backgrounds, from both rural and urban sectors, and with little or no prior experience in the United States or elsewhere outside their home country. It is anticipated that the selection of participants will reflect Indonesia's geographic, institutional, ethnic, and gender diversity. Most of the students selected will be in their junior year of study and will have completed approximately nine years of formal English study.

One grant will be awarded for the administration of this program and the organization of U.S. based activities. The grant recipient will be expected to identify the participating colleges and universities that will host students in groups of no more than 20 each. U.S. host institutions should be identified with an eye toward geographic and institutional diversity and the ability to provide the highest quality English language instruction, which is the primary objective of the program. In identifying the participating host institutions, the proposal should make clear (a) why these institutions have been recommended, (b) what particular strengths they will bring to the program, and (c) how those institutions will specifically meet the program content requirements as outlined above. Plans for participant housing arrangements should be outlined and should maximize the opportunities for program participants to practice their English speaking and listening skills with native English speakers and with people from countries other than Indonesia.

Students will be available for these programs in three discrete academic periods: (1) Spring 2011; (2) Summer 2011; and (3) Fall 2011. At each campus program, it is essential that all students not be placed together in the same English courses, but rather that they study with students of other nationalities and language backgrounds who will also be attending these intensive English language programs. Applicants should therefore design a program that will offer an academic residency component of eight weeks, the central element of which is an intensive English language training course (English for Academic Purposes), together with other instructional elements that will develop the participants' general reading, writing, speaking and listening skills. Provision should also be made for the testing of those skills before, during and after the program.

Further guidance can be found in the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2010.

Approximate Total Funding: $1,443,000.

Approximate Number of Awards: 1.

Approximate Average Award: $1,443,000.

Anticipated Award Date: June 1, 2010.

Anticipated Project Completion Date: March 2012.

Additional Information

At this time it is not known whether additional funding will be available in subsequent fiscal years. However, pending successful implementation of this program and the availability of funds in subsequent fiscal years, ECA reserves the right to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or

submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the East Asia and Pacific Programs Branch of the Office of Academic Programs, Bureau of Educational and Cultural Affairs (ECA/A/E/EAP), SA–5, 4th Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504. Telephone: (202) 632–3213 and fax: (202) 632–9464, *LeenertsSL@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/EAP–2010–IELSP located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Shana Leenerts and refer to the Funding Opportunity Number ECA/A/E/EAP–2010–IELSP located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please Take into Consideration the Following Information When Preparing Your Proposal Narrative

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The award recipient will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide

opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Describe your plans for: i.e. sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements *etc.*

IV.3e. Please Take the Following Information Into Consideration When Preparing Your Budget

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. Budget requests may not exceed $1,443,000. The number of participants who will take part should be clearly stated. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Instructional costs (*For example:* Language program fees, educational course materials);

(2) Lodging, meals, and incidental expenses for participants;

(3) Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

(4) Administrative costs as necessary;

(5) International and necessary in-country airfare and travel expenses;

(6) U.S. ground transportation costs to/from airports and for one regional trip for cultural enhancement.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: April 29, 2010.

Reference Number: ECA/A/E/EAP–2010–IELSP.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for

further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and 10 copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/EAP–2010–IELSP, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, 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. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support

Contact Center Phone: 800–518–4726

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time

E-mail: support@grants.gov

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications Executive Order 12372 Does Not Apply to This Program

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grant agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program Planning and Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards

(grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

8. Cost-effectiveness and Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants; http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include detailed information about program and participant progress.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3)) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Shana Leenerts, East Asia and Pacific Fulbright Programs Branch, Office of Academic Programs, Bureau of Educational and Cultural Affairs (ECA/A/E/EAP), 4th Floor, ECA/A/E/EAP–2010–IELSP, U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20522–0504. Telephone: (202) 632–3213 and fax: (202) 632–9464.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EAP–2010–IELSP.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 10, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–5970 Filed 3–17–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Approval From the Office of Management and Budget of a New Information Collection Activity, Request for Comments; Human Response to Aviation Noise in National Parks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a new information collection. The data from this research are critically important for establishing the scientific basis for air tour management policy decisions in the National Parks as mandated by the National Parks Air Tour Management Act of 2000 (NPATMA).

DATES: Please submit comments by May 17, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Human Response to Aviation Noise in National Parks.

Type of Request: New collection.

OMB Control Number: 2120–XXXX.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 19,440 Respondents.

Frequency: The information is collected one time per respondent.

Estimated Average Burden per Response: Approximately 15 minutes per response.

Estimated Annual Burden Hours: An estimated 4,860 hours annually.

Abstract: The data from this research are critically important for establishing the scientific basis for air tour management policy decisions in the National Parks as mandated by the National Parks Air Tour Management Act of 2000 (NPATMA). The research expands on previous aircraft noise dose-response work by using a wider variety of survey methods, by including different site types and visitor experiences from those previously measured, and by increasing site type replication.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 11, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–5865 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Petition for Approval

In accordance with Title 49 of the Code of Federal Regulations (CFR) § 236.913(e)(1), notice is hereby given that the Federal Railroad Administration (FRA) has received a petition for approval of a revised version of an approved Product Safety Plan (PSP) submitted pursuant to 49 CFR Part 236, subpart H. The individual petition is described below, including the party seeking approval, the requisite docket number and a brief summary of the petition.

BNSF Railway Company

Docket Number FRA–2006–23687

The BNSF Railway Company (BNSF) submitted a petition for approval of a revised version (version 3.0) of their already approved PSP for the Electronic Train Management System (ETMS). BNSF asserts that the revised PSP demonstrates that ETMS has been designed to incrementally scale out functionality and applicability to different railroad territory type configurations. Consequently, ETMS and the PSP has evolved over time as new functionality was added to the system and tested on different operational scenarios that exist on the BNSF rail network. BNSF also believes the revised PSP supports the requirements as described in 49 CFR Part 236, subpart H regarding the "Standards for Development and Use of Processor-Based Signal and Train Control Systems" to receive approval for implementation of the ETMS II, ETMS IV and ETMS VI configuration types. The revised PSP provides descriptions of: The ETMS itself, ETMS safety process and analyses, validation and verification processes used during development of ETMS, and operational and support requirements and procedures.

Interested parties are invited to participate in this safety review by providing written information or comments pertinent to FRA's consideration of the above petition for approval of a revised PSP. All communications concerning this approval should identify the appropriate docket number (Docket Number FRA–2006–23687) and may be submitted by any of the following methods:

- *Web site: http://regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W12140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 U.S. Department of Transportation Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://www.regulations.gov.*

Interested parties are invited to review the informational filing and associated documents at the DOT Docket Management facility during regular business hours (9 a.m.–5 p.m.) at 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. All documents in the public docket are available for inspection and copying on the internet at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications received into any of our dockets by name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.).

You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on March 10, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–5859 Filed 3–17–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an extension of OMB approval of the information collection titled, "Disclosure of Financial and Other Information by National Banks (12 CFR 18)."

DATES: Comments must be submitted on or before May 17, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0182, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0182, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: *Title:* Disclosure of Financial and Other Information by National Banks (12 CFR part 18).

OMB Control No.: 1557–0182.

Type of Review: Extension, without revision, of a currently approved collection.

Description: The collections of information are found in 12 CFR 18.3, 18.4, and 18.8. Section 18.3 requires the preparation of an annual disclosure statement and specifies how it must be made available. Section 18.4 outlines what the disclosure statement must contain and permits a bank to supplement its annual disclosure statement with an optional narrative. Lastly, § 18.8 requires that a national bank promptly furnish its annual disclosure statement upon request.

The regulation applies to approximately 1,535 national banks and 50 Federal branches and agencies. Most banks will use their Call Reports or information prepared for annual reports as their disclosure material.

This program of periodic financial disclosure is needed, not only to facilitate informed decision making by existing and potential customers and investors, but also to improve public understanding of, and confidence in, the financial condition of individual national banks and the national banking system. Further, financial disclosure reduces the likelihood that the market will overreact to incomplete information.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 1,585.

Estimated Number of Responses: 1,585.

Estimated Annual Burden: 793 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 15, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–5942 Filed 3–17–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Revenue Procedure 2004–12]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–12, Revenue Procedure 2004–12, Health Insurance Costs of Eligible Individuals.

DATES: Written comments should be received on or before May 17, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution

Avenue, NW., Washington DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Costs of Eligible Individuals.

OMB Number: 1545–1875.

Revenue Procedure 2004–12.

Abstract: Revenue Procedure 2004–12 informs states how to elect a health program to be qualified health insurance for purposes of the health coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impeded in their efforts to claim the HCTC.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: States, Local or Tribal Government.

Estimated Number of Respondents: 51.

Estimated Average Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 26.

The following paragraph applies to all the collections of information covered by this notice.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5873 Filed 3–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 6629; LR–7]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–7 (TD 6629). Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands (§ 1.934–1).

DATES: Written comments should be received on or before May 17, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands.

OMB Number: 1545–0782. *Regulation Project Number:* TD 6629.

Abstract: Internal Revenue Code section 934(a)(1954 code) provides that the tax liability incurred to the Virgin Islands shall not be reduced except to the extent provided in Code section 934(b) and (c). Taxpayers applying for tax rebates or subsidies under section 934 of the 1954 Code must provide certain information in order to obtain these benefits.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 22 minutes.

Estimated Total Annual Burden Hours: 184.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5878 Filed 3–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–536–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–536–89 (TD 8300), Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984 (§ 1.1998 to be assured of consideration).

DATES: Written comments should be received on or before May 17, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.

OMB Number: 1545–1132.

Regulation Project Number: INTL–536–89.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting and recordkeeping requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 5000.

Estimated Time per Respondent/Recordkeeper: 10 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 852.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5880 Filed 3–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–362–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–362–88 (TD 8618), Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation (§§ 1.954–1 and 1.954–2).

DATES: Written comments should be received on or before May 17, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation.

OMB Number: 1545–1068.

Regulation Project Number: INTL–362–88.

Abstract: A U.S. shareholder of a controlled foreign corporation is subject to current U.S. taxation on the subpart F income of the foreign corporation, which consists of several categories of income. The election and recordkeeping requirements in the regulation are necessary to exclude certain high-taxed or active business income from subpart F income or to include certain income in the appropriate category of subpart F

income. The record-keeping and election procedures allow the U.S. shareholders and the IRS to know the amount of the controlled foreign corporation's subpart F income.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/ Recordkeepers: 50,500.

Estimated Time per Respondent/ Recordkeeper: 1 hour.

Estimated Total Annual Reporting/ Recordkeeping Hours: 50,417.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5877 Filed 3–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–42

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–42 (RP–135718–06), Automatic Consent to Change Certain Elections Relating to the Apportionment of Interest Expense, Research and Experimental Expenditures Under Section 1.861.

DATES: Written comments should be received on or before May 17, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Automatic Consent to Change Certain Elections Relating to the Apportionment of Interest Expense, Research and Experimental Expenditures Under Section 1.861.

OMB Number: 1545–2040.

Revenue Procedure Number: Revenue Procedure 2006–42.

Abstract: This revenue procedure provides administrative guidance under which a taxpayer may obtain automatic consent to change (a) from the fair market value method or from the alternative tax book method to apportion interest expense or (b) from the sales method or the optional gross income methods to apportion research and experimental expenditures.

Current Actions: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions, and individuals or households.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 8, 2010.

R. Joseph Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5875 Filed 3–17–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0619]

Proposed Information Collection (IRIS) Activity; Comment Request

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (OI&T), 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 on rapid response to electronic inquiries submitted to VA through the Inquiry Routing and Information System (IRIS).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System at *http://www.Regulations.gov*; or to Diane Huber, Office of Information and Technology (005Q3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *diane.huber@va.gov.* Please refer to "OMB Control No. 2900–0619" in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Diane Huber (703) 734–0189 or FAX (301) 734–0000.

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, OI&T invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OI&T's functions, including whether the information will have practical utility; (2) the accuracy of OI&T'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: Inquiry Routing and Information System (IRIS), VA Form 0873.

OMB Control Number: 2900–0619.

Type of Review: Extension of a currently approved collection.

Abstract: The World Wide Web is a powerful media for the delivery of information and services to veterans, dependents, and active duty personnel worldwide. IRIS allows a customer to submit questions, complaints, compliments, and suggestions directly to the appropriate office at any time and receive an answer more quickly than through standard mail. IRIS does not provide applications to veterans or serve as a conduit for patient data.

Affected Public: Individuals or Households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 360,000.

Dated: March 12, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–5844 Filed 3–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Proposed Information Collection (Technical Industry Standards) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), 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 on the information needed to ensure items being purchased meet minimum safety standards.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0586" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859 or Fax.

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, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L'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: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–75, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.211–75, Technical Industry Standards, requires items offered for sale to VA under the solicitation conform to certain technical industry standards, such as Underwriters Laboratory (UL) or the National Fire Protection Association. Contractor must furnish evidence to VA stating that the items meet the requirements. The evidence can be in a tag or seal affixed to the item, such as the UL tag on an electrical cord or a tag on a fire-rated door. Items that do not meet the standards or not previously tested must come with a certificate from an acceptable laboratory certifying that the items furnished were tested in accordance with, and conform to, the specified standards.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 50 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–5845 Filed 3–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Proposed Information Collection (Service Data Manual) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), 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 on the information needed to repair technical medical equipment and devices or mechanical equipment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0587" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859 or Fax.

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, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L'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: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Service Data Manual (previously 852.210–70).

OMB Control Number: 2900–0587.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–70, Service Data Manual, requires a contractor to furnish both operator's manuals and maintenance/repair manuals when technical medical equipment and devices, or mechanical equipment are provided to VA. This clause sets forth those requirements and the minimum standards the manuals must meet to be acceptable. The operator's manual will be used by the individual operating the equipment to ensure proper operation and cleaning and the maintenance/repair manual will be used by VA equipment repair staff.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,000.

Dated: March 12, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–5846 Filed 3–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0117]

Proposed Information Collection (Inquiry Concerning Applicant for Employment) Activity: Comment Request

AGENCY: Office of Human Resources and Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Human Resources and Administration (HRA), 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 on the information needed to determine an applicant's suitability and qualification for employment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Jean Hayes, Office of Human Resources Management (051B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *jean.hayes@va.gov.* Please refer to "OMB Control No. 2900–0117" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Jean Hayes at (202) 461–7863.

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, HRA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility;

(2) the accuracy of HRA'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: Inquiry Concerning Applicant for Employment, VA Form Letter 5–127.

OMB Control Number: 2900–0117.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 5–127 is used to verify an applicant qualification for employment at VA. The information is obtained from individuals who have knowledge of the applicant's past work record, performance, and character.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 3,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 12,500.

Dated: March 15, 2010.

By direction of the Secretary:

Denise McLamb,

Enterprise Records Service.

[FR Doc. 2010–5924 Filed 3–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0589]

Proposed Information Collection (Purchase of Shellfish) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), 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 on the information needed to ensure that shellfish purchased by VA are from a State- and Federal-approved and inspected source.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0589" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859 or Fax.

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, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L'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: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.270–3, Shellfish.

OMB Control Number: 2900–0589.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.270–3, Purchase of Shellfish, requires a firm furnishing shellfish must ensure the item are packaged in approved container and labeled with the packer's State certificate number and State abbreviation. In addition, the firm must ensure the container is tagged or labeled indicating the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper. The information is used to ensure shellfish purchased by VA are from a State and Federal approved and inspected source.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 17 hours.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: March 10, 2010.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–5848 Filed 3–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0588]

Proposed Information Collection (Special Notice) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), 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 on the information needed to ensure that equipment proposed by the contractor meets specification requirements.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Arita Tillman, Office of Acquisition and Logistics (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0588" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859 or Fax.

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, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L'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: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–74, Special Notice (previously 852.210–74).

OMB Control Number: 2900–0588.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.211–74, Special Notice, is used only in VA's telephone system acquisition solicitations and requires the contractor, after award of the contract, to submit descriptive literature on the equipment stating the equipment meets specification requirements of the solicitation.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: 150 hours.

Estimated Average Burden per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30.

Dated: March 12, 2010.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–5847 Filed 3–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0593]

Proposed Information Collection (Caution to Bidders—Bid Envelopes) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), 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 on the information needed to identify bid envelopes from other mail parcels.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Arita Tillman, Office of Acquisition and Logistics (049A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0593" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859 or Fax.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 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, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L'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: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.214–70, Caution to Bidders—Bid Envelopes.

OMB Control Number: 2900–0593.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.214–70, Caution to Bidders—Bid Envelopes, advises bidders that it is their responsibility to ensure their bid price cannot be ascertained by anyone prior to bid opening. It also advises bidders to identify their bids by showing the invitation number and bid opening date on the outside of the bid envelope. The information requested from bidders is needed to identify bid envelopes from other mail or packages received and to ensure the bids are delivered to the proper bid opening room on time and prior to bid opening.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 960 hours.

Estimated Average Burden per Respondent: 10 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 346,000.

Dated: March 12, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–5849 Filed 3–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Women Veterans will be held on March 30–April 1, 2010, at the Capital Hilton, 1001 16th Street, NW., Washington, DC, from 8:30 until 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes

recommendations to the Secretary regarding such programs and activities.

On March 30, the Committee will meet in the Statler AB Room and the session will include an overview of Veterans Health Administration initiatives, the women Veterans Health Strategic Health Care Group and the Veterans Benefits Administration initiatives targeting women Veterans. On March 31, the Committee will meet in the South American AB Room and the session will include an update on VA's outreach to women Veterans, VA's contract exam and the Committee's 2008 report recommendations. On April 1, the Committee will meet in the Federal B Room to resume working on its 2010 report to the Secretary.

Any member of the public wishing to attend should contact Ms. Shannon L. Middleton at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, or call (202) 461–6193, or fax at (202) 273–7092, or e-mail at *00W@mail.va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: March 12, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–5866 Filed 3–17–10; 8:45 am]

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