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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, March 22, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–FV–10–0115; FV11–932–1 IR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for 2011 and subsequent fiscal years from $44.72 to $16.61 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective March 5, 2011. Comments received by May 3, 2011, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jeff Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Jeffrey.Smutny@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning on January 1, 2011, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2011 and subsequent fiscal years from $44.72 to $16.61 per ton of olives.

The California olive marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2010 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate of $44.72 per ton of olives that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 15, 2010, and unanimously recommended 2011 expenditures of $2,203,909 and an assessment rate of $16.61 per ton of olives. In comparison, last year's budgeted expenditures were $929,923. The assessment rate of $16.61 is $28.11 per ton lower than the rate currently in effect.

The Committee recommended the lower assessment rate because of a substantial increase in olive volume for the 2011 fiscal year. The olive volume available for fiscal year 2011 as reported

by the California Agricultural Statistics Service (CASS) is 164,984 tons, which compares to 23,033 tons reported for the 2010 fiscal year.

The major expenditures recommended by the Committee for the 2011 fiscal year include $1,093,009 for Research Programs, $700,000 for Marketing Programs, $335,900 for General Administration, and $75,000 for Inspection Equipment Development. Budgeted expenses for these items in 2010 were $300,000, $255,000, $324,923, and $50,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers for the 2011 fiscal year, and additional pertinent factors. Actual assessable tonnage for the 2011 fiscal year is expected to be lower than the 164,984 tons reported by CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order of one fiscal year's expenses (§ 932.40).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2011 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,000 producers of California olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

Based upon information from the industry and CASS, the average grower price for 2010 was approximately $811 per ton and total grower production was around 165,000 tons. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than $750,000. Thus, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2011 and subsequent fiscal years from $44.72 to $16.61 per ton of olives. The Committee unanimously recommended 2011 expenditures of $2,203,909 and an assessment rate of $16.61 per ton. The recommended assessment rate of $16.61 is $28.11 lower than the 2010 rate. Income generated from the $16.61 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income.

The major expenditures recommended by the Committee for the 2011 fiscal year include $1,093,009 for Research Programs, $700,000 for Marketing Programs, $335,900 for General Administration, and $75,000 for Inspection Equipment Development. Budgeted expenses for these items in 2010 were $300,000, $255,000, $324,923, and $50,000, respectively.

The Committee recommended the lower assessment rate because of a substantial increase in olive volume for the 2011 fiscal year. The olive volume available for fiscal year 2011 as reported by CASS is 164,984 tons, as compared to 23,033 tons reported for the 2010 fiscal year.

The Committee reviewed and unanimously recommended 2011 expenditures of $2,203,909, which included increases in administrative expenses, marketing programs, equipment development and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Executive Subcommittee, Marketing Subcommittee, Inspection Subcommittee and the Research Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry. The assessment rate of $16.61 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, and additional pertinent factors.

A review of historical information and preliminary information indicates that grower price could range between approximately $811 per ton and $1,105 per ton. Therefore, the estimated assessment revenue for the 2011 fiscal year as a percentage of total grower revenue could range between 1.5 and 2 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 15, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on this interim rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrderSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2011 fiscal year began on January 1, 2011, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) this action decreases the assessment rate for assessable olives beginning with the 2011 fiscal year; (3) handlers are aware of this action, which was unanimously recommended at a public meeting, and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2011, an assessment rate of $16.61 per ton is established for California olives.

Dated: February 25, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4807 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–FV–10–0006]

Blueberry Promotion, Research, and Information Order; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Blueberry Promotion, Research, and Information Order (Order) under the criteria contained in Section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS concluded that there is a continued need for the order.

ADDRESSES: Interested persons may obtain a copy of the review on the Internet at: *http://www.regulations.gov* or requests for copies can be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, (Department) Room 0632–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; facsimile: (202) 205–2800 or electronic mail: *Jeanette.Palmer@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: *Jeanette.Palmer@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Blueberry Promotion, Research and Information Order (7 CFR part 1218) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411–7425].

The Order became effective on August 16, 2000 [65 FR 43961]. The Order is administered by the U.S. Highbush Blueberry Council (Council) with oversight by the Department of Agriculture (Department). The program is funded by assessments on highbush (cultivated) blueberries grown in and imported into the United States. Producers and importers pay the assessment. The producer assessment is remitted by first handlers, and the importer assessment is remitted by the U.S. Customs and Border Protection. Producers and importers who produce or import less than 2,000 pounds of highbush blueberries annually are exempt from the program. The purpose of the Order is to finance a coordinated program of promotion, research, and information to maintain and expand the market for fresh and processed cultivated blueberries in the United States and abroad.

The Council is composed of 16 members as follows: 10 producers (one from each of four regions and one from each of the top six producing states); 3 importers; 1 exporter from a foreign production area; 1 handler; and 1 public member. Each member has an alternate. The members and alternates are appointed to the Council by the Secretary of Agriculture and serve a term of 3 years.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters who are subject to the provisions of the Order. The majority of the blueberry producers covered by the Order may be classified as small entities. Most importers, first handlers, and exporters would not be classified as small businesses.

AMS published in the **Federal Register** on March 24, 2006 [71 FR 14827], its plan to review certain regulations, including the Blueberry Order under criteria contained in section 610 of the RFA [5 U.S.C. 601–612]. Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review.

AMS published a notice of review and request for written comments in the **Federal Register** on February 23, 2010 [75 FR 7986]. Twenty comments were received by the April 26, 2010, deadline.

The review was undertaken to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impacts on small entities. AMS considered the following factors: (1) The continued need for the Order; (2) comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent

to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Based on its review, the Department has concluded that there is a continued need for the Order. According to the Council's World Blueberry Acreage and Production Report, highbush blueberry acreage in North America increased from 71,075 acres in 2005 to an estimated 95,607 acres in 2008, a 35 percent increase in just three years. The United States share of this total increased from 56,665 acres in 2005 to 74,992 acres in 2008, a 32 percent increase. Highbush blueberry production volume is expected to increase significantly in the coming years.

Regarding the nature of complaints or comments received from the public concerning the Order, as previously mentioned twenty comments were received. They are discussed in the following paragraphs. One commenter opposed the program stating that government funds should not be used to market blueberries. However, the blueberry program is funded by producers and importers of blueberries. The program is developed by the industry to expand the markets for blueberries in the United States.

Nineteen commenters supported the program and considered it to be effective in promoting blueberries. All the commenters stated that the program is needed to increase blueberry consumption due to increase blueberry production.

One commenter stated that investing in promotion now to build a future is necessary even in poor economic conditions. Twelve commenters in favor of the program stated that further research of blueberries is needed to stay competitive in a global industry. Six commenters stated the program is needed to develop health claims for blueberries.

One commenter who supports the program stated that the ability for growers from different production areas to work together in an effort to increase consumption through product research and marketing programs has proven effective for many other crops.

Ten commenters stated that the assessment dollars are collected fairly from all U.S. production and imports and the Council utilizes the funds in a cost effective manner.

AMS provides Federal oversight of the blueberry program. The Order is not unduly complex, and AMS has not identified any Federal rules, or State and local regulations that duplicate, overlap, or conflict with the Order. Over the years, regulatory changes have been made to address industry operation changes and to improve program administration.

Regarding evaluations of the program or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order, section 512 (a)(6) of the Act and section 1218.55 of the Order require the Council to evaluate the program and to comply with the independent evaluation provision of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR) [7 U.S.C. 7201]. The goal of these evaluations is to assure that the Order and the regulations implemented under it fit the needs of the industry and are consistent with the Act. The Council conducted an evaluation of the program under the FAIR in 2006. This evaluation, "An Economic Analysis of Domestic Market Impacts of the U.S. Highbush Blueberry Council," concluded that the promotional spending by the Council clearly had a positive effect on demand. The next evaluation is scheduled to be conducted late in 2011.

Based upon its review, AMS has determined that the Order should be continued. AMS plans to continue working with the blueberry industry in maintaining an effective program.

Dated: February 25, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4808 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0141; Directorate Identifier 2011–NE–06–AD; Amendment 39–16617; AD 2011–05–08]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Model Arriel 1E2, 1S, and 1S1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action supersedes emergency airworthiness directive (AD) 2011–05–51 that was sent previously to all known U.S. owners and operators of the products listed above. That AD requires inspecting the fuel ejector in the body of the fuel ejector assembly for proper installation by checking that the circlip is properly seated in its groove. That AD was prompted by three reports of incorrectly assembled low-pressure fuel system ejectors; with one of them resulting in an uncommanded engine in-flight shutdown. This AD requires the same actions and compliance times as the emergency AD, after receipt of the emergency AD, and expands the AD applicability by including helicopters having one or two affected engines and experiencing no starting difficulties. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In October 2009, Turbomeca issued SB [Service Bulletin] No. 292 73 0826, Version A that instructed operators to check the effectiveness of the bonding of the ejector jet installed on the low-pressure fuel system between the tank and the high-pressure fuel pump.

So far, Turbomeca have been informed of three discrepancies with the reassembly of the ejector following a maintenance procedure performed during accomplishment of Turbomeca SB No. 292 73 0826, Version A.

In all three cases, the discrepancies led to a "one-off" abnormal evolution of gas generator (NG) rating during engine starting. In one of these cases, this resulted in an uncommanded in-flight shutdown, during a cruising phase at 8,000 feet.

We are issuing this AD to prevent uncommanded engine in-flight shutdown of one or both engines in a two-engine helicopter and an emergency autorotation landing or accident.

DATES: This AD becomes effective March 9, 2011.

We must receive comments on this AD by April 4, 2011.

The Director of the Federal Register approved the incorporation by reference of Turbomeca Mandatory Service Bulletin (MSB) No. A292 73 0834, Version B, dated February 8, 2011, listed in the AD as of March 9, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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.

FOR FURTHER INFORMATION CONTACT: Rose Len, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7772; fax: (781) 238–7199; e-mail: *rose.len@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive EASA AD No. 2011–0023–E, dated February 9, 2011 (corrected on February 10, 2011) (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> In October 2009, Turbomeca issued SB [Service Bulletin] No. 292 73 0826, Version A that instructed operators to check the effectiveness of the bonding of the ejector jet installed on the low-pressure fuel system between the tank and the high-pressure fuel pump.
>
> So far, Turbomeca have been informed of three discrepancies with the reassembly of the ejector following a maintenance procedure performed during accomplishment of Turbomeca SB No. 292 73 0826, Version A.
>
> In all three cases, the discrepancies led to a "one-off" abnormal evolution of gas generator (NG) rating during engine starting. In one of these cases, this resulted in an uncommanded in-flight shutdown, during a cruising phase at 8,000 feet.

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

Relevant Service Information

We reviewed Turbomeca MSB No. A292 73 0834, Version B, dated February 8, 2011, and SB No. 292 73 0826, Version B, dated February 4, 2011. This service information describes procedures for inspecting for proper ejector installation.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires inspecting the fuel ejector in the body of the fuel ejector assembly for proper installation by checking that the circlip is properly seated in its groove, for all affected engines. This AD requires the same actions and compliance times as emergency AD 2011–05–51, after receipt of the emergency AD, and expands the AD applicability by including helicopters having one or two affected engines and experiencing no starting difficulties.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the high risk of uncommanded engine in-flight shutdown of one or both engines in a two-engine helicopter and an emergency autorotation landing or accident.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0141; Directorate Identifier 2011–NE–06–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–05–08 Turbomeca: Amendment 39–16617; Docket No. FAA–2011–0141; Directorate Identifier 2011–NE–06–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 9, 2011.

Affected ADs

(b) This AD supersedes emergency AD 2011–05–51, issued on February 15, 2011.

Applicability

(c) This AD applies to Turbomeca Arriel 1E2, 1S, and 1S1 turboshaft engines that have incorporated Turbomeca Service Bulletin (SB) No. 292 73 0826, Version A, dated October 13, 2009, or incorporated Turbomeca Internal Consign No. 298468. These engines are installed on, but not limited to, Eurocopter Deutschland MBB BK117–C2 and BK117–C1, and Sikorsky S–76A series and S–76C series, helicopters.

Reason

(d) This AD was prompted by three reports of incorrectly assembled low-pressure fuel system ejectors; with one of them resulting in an uncommanded engine in-flight shutdown. We are issuing this AD to prevent uncommanded engine in-flight shutdown of one or both engines in a two-engine helicopter and an emergency autorotation landing or accident.

Actions and Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Fuel Ejector Inspection

(f) Inspect the fuel ejector in the body of the fuel ejector assembly for proper installation by checking that the circlip is properly seated in its groove. Use Paragraph 2.B of the Instructions to be Incorporated, of Turbomeca Mandatory Service Bulletin (MSB) No. A292 73 0834, Version B, dated February 8, 2011 to do the inspection. Inspect at the following compliance times:

(1) For helicopters having at least one of the two affected engines experiencing starting difficulties, inspect within 5 flight hours (FH) after receipt of emergency AD 2011–05–51 or after the effective date of this AD, whichever occurs first.

(2) For helicopters having only one affected engine, and experiencing starting difficulties in that engine, inspect within 20 FH after receipt of emergency AD 2011–05–51 or after the effective date of this AD, whichever occurs first.

(3) For helicopters having one or two affected engines and experiencing no starting difficulties, inspect within 100 FH after the effective date of this AD.

Inspection Results

(g) If you find a fuel ejector improperly installed in the body of the fuel ejector assembly, replace the fuel ejector assembly before further flight with a serviceable fuel ejector assembly.

Definition

(h) For the purpose of this AD, starting difficulties occur when N1 stagnation or variations are encountered. During starting, N1 rise shall be continuous and linear up to ground idle.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Inspections and replacements done using Turbomeca MSB No. A292 73 0834, Version A, dated February 4, 2011, or Turbomeca SB No. 292 73 0826, Version B, dated February 4, 2011, before the effective date of this AD, satisfy the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) For further information about this AD, contact: Rose Len, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7772; fax: (781) 238–7199; e-mail: *rose.len@faa.gov*.

(l) For copies of the service information referenced in this AD, contact: Turbomeca, 40220 Tarnos, France; phone: 33 559 74 40 00; fax: 33 559 74 45 15; Web site: *http://www.turbomeca-support.com*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803.

(m) EASA AD No. 2011–0023–E, dated February 9, 2011 (corrected on February 10, 2011), also pertains to this AD.

Material Incorporated by Reference

(n) You must use Turbomeca Mandatory Service Bulletin No. A292 73 0834, Version B, dated February 8, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 559 74 40 00; fax: 33 559 74 45 15; Web site: *http://www.turbomeca-support.com*.

(3) 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*.

Issued in Burlington, Massachusetts, on February 22, 2011.

Peter A. White,

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

[FR Doc. 2011–4832 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30770; Amdt. No. 3414]

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 4, 2011. 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 4, 2011.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591;

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

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

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

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on February 18, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 7 APR 2011

Blakely, GA, Early County, RNAV (GPS) RWY 5, Amdt 2
Blakely, GA, Early County, RNAV (GPS) RWY 23, Amdt 2
Newberry, MI, Luce County, RNAV (GPS) RWY 11, Orig-A
Whitefield, NH, Mount Washington Rgnl, LOC/NDB RWY 10, Amdt 7
Whitefield, NH, Mount Washington Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
Raton, NM, Raton Muni/Crews Field, Takeoff Minimums and Obstacle DP, Amdt 1
Syracuse, NY, Syracuse Hancock Intl, ILS OR LOC RWY 10, Amdt 13
Syracuse, NY, Syracuse Hancock Intl, ILS OR LOC RWY 28, ILS RWY 28 (SA CAT I), ILS RWY 28 (CAT II), Amdt 34
Syracuse, NY, Syracuse Hancock Intl, RNAV (GPS) RWY 10, Amdt 2
Syracuse, NY, Syracuse Hancock Intl, RNAV (GPS) RWY 28, Amdt 2
Syracuse, NY, Syracuse Hancock Intl, TACAN RWY 33, Orig
Syracuse, NY, Syracuse Hancock Intl, VOR RWY 15, Amdt 23
Syracuse, NY, Syracuse Hancock Intl, VOR OR TACAN RWY 33, Orig-D, CANCELLED
Bedford, PA, Bedford County, Takeoff Minimums and Obstacle DP, Amdt 1
College Station, TX, Easterwood Field, Takeoff Minimums and Obstacle DP, Amdt 3

Corsicana, TX, C David Campbell Field-Corsicana Muni, RNAV (GPS) RWY 14, Orig-A
Corsicana, TX, C David Campbell Field-Corsicana Muni, RNAV (GPS) RWY 32, Orig-A
Houston, TX, Lone Star Executive, ILS OR LOC RWY 14, Amdt 2B
Houston, TX, Lone Star Executive, NDB RWY 14, Amdt 2B
Guernsey, WY, Camp Guernsey, Takeoff Minimums and Obstacle DP, Amdt 1

Effective 5 MAY 2011

St. Paul Island, AK, St. Paul Island, LOC/DME BC RWY 18, Amdt 4A
St. Paul Island, AK, St. Paul Island, RNAV (GPS) RWY 18, Amdt 2A
Russellville, AL, Bill Pugh Field, RNAV (GPS) RWY 2, Orig-A
Russellville, AL, Bill Pugh Field, RNAV (GPS) RWY 20, Orig-A
Russellville, AL, Bill Pugh Field, Takeoff Minimums and Obstacle DP, Orig-A
Bay Minette, AL, Bay Minette Muni, RNAV (GPS) RWY 8, Amdt 1
Bentonville, AR, Bentonville Muni/Louise M Thaden Field, Takeoff Minimums and Obstacle DP, Amdt 1
Little Rock, AR, Adams Field, RNAV (GPS) RWY 4L, Amdt 1A
Little Rock, AR, Adams Field, RNAV (GPS) RWY 4R, Amdt 1A
Hartford, CT, Hartford-Brainard, LDA RWY 2, Amdt 1G
Hartford, CT, Hartford-Brainard, VOR OR GPS-A, Amdt 9C
Indianapolis, IN, Indianapolis Executive, RNAV (GPS) RWY 18, Amdt 1
Indianapolis, IN, Indianapolis Executive, VOR/DME RWY 18, Amdt 1
Indianapolis, IN, Indianapolis Metropolitan, Takeoff Minimums and Obstacle DP, Amdt 3
Logansport, IN, Logansport/Cass County, Takeoff Minimums and Obstacle DP, Amdt 1
St. Ignace, MI, Mackinac County, Takeoff Minimums and Obstacle DP, Orig
Clarksdale, MS, Fletcher Field, VOR/DME RWY 18, Orig-B
Lincolnton, NC, Lincolnton-Lincoln County Rgnl, NDB RWY 23, Amdt 3
Lincolnton, NC, Lincolnton-Lincoln County Rgnl, RNAV (GPS) RWY 5, Amdt 1
Lincolnton, NC, Lincolnton-Lincoln County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1,
Wilmington, NC, Wilmington Intl, ILS OR LOC/DME RWY 6, Amdt 1
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 6, Amdt 2
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 17, Amdt 2
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 35, Amdt 2
Caldwell, NJ, Essex County, Takeoff Minimums and Obstacle DP, Amdt 2
Bryce Canyon, UT, Bryce Canyon, RNAV (GPS) RWY 3, Orig-A
Grundy, VA, Grundy Muni, GPS RWY 22, Orig, CANCELLED
Grundy, VA, Grundy Muni, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16R, ILS RWY 16R (SA CAT I), ILS RWY 16R (CAT II), ILS RWY 16R (CAT III), Amdt 1

[FR Doc. 2011–4542 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30771; Amdt. No. 3415]

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 4, 2011. 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 4, 2011.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment

incorporates only specific 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 February 18, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
7–Apr–11	WI	Stevens Point	Stevens Point Muni	0/7290	2/7/11	RNAV (GPS) RWY 3, Orig
7–Apr–11	IL	Chicago	Chicago-O'Hare Intl	0/7506	2/7/11	ILS OR LOC RWY 9L, ILS RWY 9L (CAT II), ILS RWY 9L (CAT III), Orig-B
7–Apr–11	NE	Nebraska City	Nebraska City Muni	0/8316	2/7/11	RNAV (GPS) RWY 15, Orig
7–Apr–11	NE	Nebraska City	Nebraska City Muni	0/8318	2/7/11	RNAV (GPS) RWY 33, Orig
7–Apr–11	NE	Superior	Superior Muni	0/9915	2/14/11	VOR/DME OR GPS A, Amdt 1
7–Apr–11	NC	Smithfield	Johnston County	1/1535	1/26/11	ILS OR LOC RWY 3, Amdt 1
7–Apr–11	SC	Aiken	Aiken Muni	1/2610	2/7/11	RNAV (GPS) RWY 7, Orig
7–Apr–11	PA	Lancaster	Lancaster	1/2611	2/7/11	RNAV (GPS) RWY 26, Amdt 1A
7–Apr–11	IL	Fairfield	Fairfield Muni	1/2742	2/8/11	Takeoff Minimums and Obstacle DP, Amdt 2
7–Apr–11	NE	Gordon	Gordon Muni	1/2743	2/8/11	Takeoff Minimums and Obstacle DP, Amdt 2
7–Apr–11	ND	Minot	Minot Intl	1/2744	2/7/11	Takeoff Minimums and Obstacle DP, Amdt 3
7–Apr–11	TN	Memphis	Memphis Intl	1/2973	2/7/11	RNAV (GPS) RWY 9, Amdt 1
7–Apr–11	TN	Memphis	Memphis Intl	1/2974	2/7/11	RNAV (GPS) RWY 27, Amdt 1
7–Apr–11	NC	Asheville	Asheville Rgnl	1/2976	2/8/11	ILS OR LOC RWY 34, Amdt 23G
7–Apr–11	FL	Boca Raton	Boca Raton	1/2977	2/7/11	RNAV (GPS) RWY 5, Orig-A
7–Apr–11	FL	Boca Raton	Boca Raton	1/2978	2/7/11	RNAV (GPS) RWY 23, Orig
7–Apr–11	LA	Lake Charles	Lake Charles Rgnl	1/2986	2/7/11	RADAR-1, Amdt 5B
7–Apr–11	TX	Kenedy	Karnes County	1/3003	2/7/11	Takeoff Minimums and Obstacle DP, Orig
7–Apr–11	MN	Moorhead	Moorhead Muni	1/3004	2/7/11	VOR A, Amdt 1A
7–Apr–11	NY	Buffalo	Buffalo Airfield	1/3299	2/7/11	RNAV (GPS) RWY 24, Orig
7–Apr–11	WV	Summersville	Summersville	1/3301	2/7/11	Takeoff Minimums and Obstacle DP, Amdt 3
7–Apr–11	OK	Oklahoma City	Wiley Post	1/3330	2/7/11	RADAR-1, Amdt 2
7–Apr–11	IL	Cahokia/St. Louis	St Louis Downtown	1/3331	2/7/11	RNAV (GPS) RWY 12R, Orig
7–Apr–11	IL	Cahokia/St. Louis	St Louis Downtown	1/3332	2/7/11	ILS OR LOC RWY 30L, Amdt 9
7–Apr–11	IL	Springfield	Abraham Lincoln Capital	1/3334	2/7/11	RNAV (GPS) RWY 4, Orig
7–Apr–11	MN	Maple Lake	Maple Lake Muni	1/3335	2/7/11	GPS RWY 28, Orig
7–Apr–11	TN	Memphis	Memphis Intl	1/3343	2/7/11	ILS OR LOC RWY 18C, Amdt 1
7–Apr–11	NE	McCook	McCook Ben Nelson Rgnl	1/3346	2/7/11	RNAV (GPS) RWY 30, Orig

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
7–Apr–11	TN	Memphis	Memphis Intl	1/3347	2/7/11	RNAV (GPS) RWY 36R, Amdt 1A
7–Apr–11	TX	Port Isabel	Port Isabel—Cameron County	1/3406	2/7/11	VOR A, Amdt 6
7–Apr–11	FL	Apalachicola	Apalachicola Regional	1/3488	2/7/11	RNAV (GPS) A, Orig
7–Apr–11	FL	Fort Myers	Page Field	1/3495	2/7/11	GPS RWY 31, Orig-A
7–Apr–11	FL	Fort Myers	Page Field	1/3496	2/7/11	ILS RWY 5, Amdt 6E
7–Apr–11	FL	Fort Myers	Page Field	1/3497	2/7/11	VOR WY 13, Orig-B
7–Apr–11	ME	Portland	Portland Intl Jetport	1/3506	2/7/11	RNAV (GPS) RWY 29, Amdt 1
7–Apr–11	TX	Fredericksburg	Gillespie County	1/3573	2/7/11	VOR/DME A, Amdt 3
7–Apr–11	TX	Fredericksburg	Gillespie County	1/3574	2/7/11	RNAV (GPS) RWY 32, Orig
7–Apr–11	TX	Fredericksburg	Gillespie County	1/3575	2/7/11	RNAV (GPS) RWY 14, Orig
7–Apr–11	NM	Albuquerque	Albuquerque Intl Sunport	1/3664	2/8/11	RNAV (GPS) RWY 35, Amdt 1
7–Apr–11	TX	Port Isabel	Port Isabel—Cameron County	1/3668	2/8/11	VOR/DME B, Amdt 3
7–Apr–11	CO	Aspen	Aspen-Pitkin Co/Sardy Field	1/3699	2/7/11	LOC/DME E, Amdt 1
7–Apr–11	CO	Aspen	Aspen-Pitkin Co/Sardy Field	1/3701	2/7/11	VOR/DME OR GPS C, Amdt 4F
7–Apr–11	VA	Winchester	Winchester Rgnl	1/3737	2/7/11	Takeoff Minimums and Obstacle DP, Orig
7–Apr–11	KY	Lexington	Blue Grass	1/3779	2/7/11	ILS OR LOC RWY 22, Amdt 20
7–Apr–11	DC	Washington	Washington Dulles Intl	1/3789	2/7/11	ILS OR LOC/DME RWY 12, Amdt 9
7–Apr–11	DC	Washington	Washington Dulles Intl	1/3790	2/7/11	RNAV (GPS) Y RWY 1R, Amdt 1
7–Apr–11	SC	Allendale	Allendale County	1/3793	2/7/11	GPS RWY 17, Orig
7–Apr–11	SC	Allendale	Allendale County	1/3795	2/7/11	VOR OR GPS A, Amdt 5
7–Apr–11	SC	Allendale	Allendale County	1/3796	2/7/11	GPS RWY 35, Amdt 1
7–Apr–11	VA	South Boston	William M Tuck	1/3819	2/7/11	VOR A, Amdt 8
7–Apr–11	VA	South Boston	William M Tuck	1/3820	2/7/11	RNAV (GPS) RWY 1, Orig
7–Apr–11	VA	South Boston	William M Tuck	1/3821	2/7/11	RNAV (GPS) RWY 19, Orig
7–Apr–11	SC	Columbia	Jim Hamilton L.B. Owens	1/4017	2/8/11	GPS RWY 31, Orig
7–Apr–11	NC	Shelby	Shelby-Cleveland County Rgnl	1/4095	2/7/11	NDB RWY 23, Amdt 1
7–Apr–11	NC	Shelby	Shelby-Cleveland County Rgnl	1/4097	2/7/11	RNAV (GPS) RWY 5, Amdt 1
7–Apr–11	MS	Bay St Louis	Stennis Intl	1/4120	2/7/11	RNAV (GPS) RWY 18, Orig-A
7–Apr–11	TN	Memphis	General DeWitt Spain	1/4170	2/7/11	VOR RWY 17, Orig-A
7–Apr–11	VA	Orange	Orange County	1/4171	2/7/11	GPS RWY 8, Orig-A
7–Apr–11	GA	Griffin	Griffin-Spalding County	1/4172	2/7/11	NDB RWY 32, Orig-A
7–Apr–11	TX	Midland	Midland Intl	1/4195	2/7/11	RNAV (GPS) RWY 10, Amdt 1
7–Apr–11	NC	Rocky Mount	Rocky Mount—Wilson Rgnl	1/4441	2/7/11	ILS OR LOC RWY 4, Amdt 16
7–Apr–11	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	1/4449	2/7/11	VOR WY 24, Orig-B
7–Apr–11	VA	Richmond	Chesterfield County	1/4480	2/7/11	ILS OR LOC RWY 33, Amdt 2
7–Apr–11	NM	Albuquerque	Albuquerque Intl Sunport	1/4505	2/3/11	ILS OR LOC RWY 8, Amdt 5E
7–Apr–11	TX	Fort Worth	Fort Worth Meacham Intl	1/4557	2/7/11	RNAV (GPS) RWY 16, Amdt 1
7–Apr–11	TX	Houston	Willam P Hobby	1/4558	2/7/11	ILS OR LOC RWY 12R, Amdt 12
7–Apr–11	TX	Houston	Willam P Hobby	1/4559	2/7/11	RNAV (GPS) RWY 22, Amdt 2
7–Apr–11	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	1/4575	2/7/11	RNAV (GPS) RWY 24, Orig-C
7–Apr–11	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	1/4576	2/7/11	RNAV (GPS) RWY 6, Orig-A
7–Apr–11	TX	Caldwell	Caldwell Muni	1/6133	2/14/11	Takeoff Minimums and Obstacle DP, Orig
7–Apr–11	TX	Cleveland	Cleveland Muni	1/6154	2/14/11	VOR A, Amdt 4B
7–Apr–11	TX	Cleveland	Cleveland Muni	1/6283	2/14/11	GPS RWY 16, Orig-B

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter XV

[Docket No. FR–5470–I–01]

RIN 2502–AI97

Emergency Homeowners' Loan Program

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

ACTION: Interim rule.

SUMMARY: This interim rule reinstates, with certain modifications, regulations that HUD formerly published to serve as the framework by which emergency relief may be provided to homeowners experiencing temporary involuntary loss of employment or underemployment resulting in a substantial reduction in income due to adverse economic conditions, and who consequently are financially unable to make full mortgage payments. These regulations were promulgated following enactment of the Emergency Homeowners' Relief Act of 1975. This 1975 statute provided standby authority to the Secretary to insure or make loans to homeowners to defray mortgage expenses, so as to prevent widespread mortgage foreclosures and distress sales of homes resulting from a homeowner's substantial reduction income. Although the 1975 regulations were quickly put in place, they were not utilized, and HUD eventually removed the regulations from the Code of Federal Regulations (CFR) in 1995.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, recently enacted into law, reauthorized the 1975 statute, with certain amendments, and made $1 billion available for this 1975 program during Fiscal Year (FY) 2011. Accordingly, HUD is reinstating the

regulations for the program, under the title of "Emergency Homeowners' Loan Program," with such modifications as necessary to mirror the statutory changes to the Emergency Homeowners' Relief Act of 1975 made by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: *Effective Date:* April 4, 2011.

Comment Due Date. May 3, 2011.

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

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

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

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

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

FOR FURTHER INFORMATION CONTACT: Ruth Roman, Director, Program Support Division, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–708–0317 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 1975, the Emergency Housing Act of 1975 (Pub. L. 94–50, approved July 2, 1975) (12 U.S.C. 2701 *et seq.*) was signed into law. Title I of this statute is the Emergency Homeowners' Relief Act (1975 Act). The 1975 Act conferred on HUD standby authority to insure or make loans to, or make emergency mortgage relief payments on behalf of, homeowners to defray their mortgage expenses (collectively emergency assistance), so as to prevent widespread mortgage foreclosures and distress sales of homes due to a substantial reduction of income resulting from the temporary involuntary loss of employment or underemployment due to adverse economic conditions. Following enactment of the Emergency Homeowners' Relief Act, HUD promulgated final regulations on December 30, 1975 (*See* 40 FR 59866) and codified these regulations in 24 CFR part 2700. In the preamble to the December 30, 1975, final rule, HUD stated as follows: "If it becomes necessary to implement the program, HUD would provide emergency relief under the standby program by coinsuring loans made by private lenders or by making direct loans to homeowners to assist them in making their mortgage payments." (*See* 40 FR 59866.) This emergency assistance program, quickly put in place by HUD in 1975, was not utilized and, in 1995, as part of HUD's effort to remove outdated, obsolete, or unutilized regulations, HUD removed the regulations in 24 CFR part 2700 from the CFR. (*See* 60 FR 47263.)

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L.111–203) (the Dodd-Frank Act), signed into law on July 21, 2010, makes available $1,000,000,000 for HUD to establish the Emergency Homeowners' Relief Fund for this reauthorized 1975 program, commencing in FY 2011, for the purpose of providing emergency mortgage assistance in accordance with the 1975 Act, as amended. HUD will administer the authority provided by the Dodd-Frank Act as the Emergency Homeowners' Loan Program (EHLP). In addition to making funding available, section 1496 of the Dodd-Frank Act also amends several provisions of the 1975 Act. The amendments to the 1975 Act include the following:

- Certification by the homeowner and the holder of the homeowner's delinquent mortgage that circumstances make it probable that there will be a foreclosure and the homeowner is in need of emergency mortgage relief;
- Establishment of a ceiling of $50,000 as the aggregate amount of emergency assistance that can be provided to any homeowner;
- Inclusion of "medical conditions" as the cause of the homeowner's involuntary unemployment or underemployment;
- Prohibition on the charging of interest on interest that is deferred on an emergency mortgage relief loan or advance of credit provided under the EHLP;
- Prohibition on the charging of interest on any emergency loan or advance of credit insured under the EHLP program at a rate that exceeds the rate of interest that is generally charged for single-family housing mortgages insured by the Federal Housing Administration; and
- Prohibition on imposition of any penalty on a homeowner who receives emergency assistance under the EHLP and repays the emergency assistance loan in full before the loan becomes due and payable.

In addition to these amendments, the 1975 Act, as amended by the Dodd-Frank Act, authorizes HUD to allow funds under the EHLP to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners.[1] Unchanged in the 1975 Act is the authority provided to the Secretary to make such delegations and accept such certifications, with respect to the processing of emergency mortgage relief payments, as the Secretary determines appropriate to facilitate the prompt and

[1] On November 12, 2010 (75 FR 69454), HUD published a notice that solicited applications from States that have existing programs that are substantially similar to HUD's, and announced the allocation of assistance by State.

efficient implementation of this type of emergency assistance authorized under the program.

Underscoring the need to make this funding immediately available to eligible homeowners are two dates: The effective date of October 1, 2010, the first date by which funding may be allocated; and the date of September 30, 2011, the last date on which HUD can enter into binding agreements with individual mortgagors approved for participation in the program. Note that a binding agreement occurs only when a borrower has been approved for participation in this program and funds have been allocated to that borrower, all of which must occur on or before September 30, 2011.

II. This Interim Rule

Given the statutory deadline of September 30, 2011, described above for HUD to enter into binding agreements with individual mortgagors approved for EHLP participation, HUD is reinstating the 1975 program regulations, substantially as promulgated in 1975, which largely adopted the complete statutory framework for emergency assistance provided for the program, with modifications to mirror the statutory changes of the Dodd-Frank Act, reflect the housing and mortgage markets of today, and make such other changes that HUD determined necessary to meet the statutory objectives of the Dodd-Frank Act.

In addition to revising the 1975 regulations to reflect the statutory changes made by the Dodd-Frank Act, this rule amends the 1975 regulations to include certain provisions of the 1975 Act that were not included in the regulations promulgated in 1975. HUD is conforming the 1975 regulations to reflect these statutory provisions, such as direct payments to mortgagees, so that the regulations reflect the full emergency assistance authority provided to HUD by the 1975 Act. Finally, HUD is using this rule to reflect terminology that is used in the mortgage market of today and to make other changes to achieve the statutory direction to make funding immediately available for emergency mortgage assistance. The following highlights the additional changes made to the 1975 regulations:

- The rule clarifies that the principal residence of the homeowner for which the homeowner seeks relief to prevent foreclosure may be a condominium, a cooperative, or a manufactured home.
- The rule includes the list of eligible institutions for which HUD is authorized to provide insurance for emergency mortgage relief loans and advances of credit as provided in section 105 of the Emergency Homeowners' Relief Act. The list of these institutions was not revised by the Dodd-Frank Act but was omitted from the 1975 regulations.
- The rule provides that an eligible homeowner must have a total annual income (as defined in these regulations, and hereafter referred to as "income") that is equal to, or less than, 120 percent the area median income (AMI), as determined by HUD and adjusted for household size. HUD defines AMI in § 2700.5 of the rule.
- The rule provides that an eligible homeowner must have incurred a substantial reduction of income, as a result of involuntary loss of employment or underemployment, that is at least 15 percent lower than the income the homeowner had prior to loss of employment or underemployment.
- The rule requires, consistent with the statute, that the aggregate amount of assistance to an eligible homeowner cannot exceed $50,000.
- The rule provides that eligible homeowners may receive assistance for up to 12 months, and in accordance with criteria established by HUD, and that such assistance may be extended once for up to 12 additional months, or may receive assistance in an amount up to the statutory ceiling of $50,000, whichever occurs first. However, please note that the **Federal Register** document, which reactivates the program for FY 2011, provides for eligible homeowners to receive assistance for up to 24 months, or up to the statutory ceiling amount of $50,000. Given the duration of high unemployment, HUD has determined that so long as eligibility requirements are maintained, HUD will provide the maximum period of 24 months of homeowner assistance at the outset.
- The rule provides, as did the 1975 regulations, that emergency assistance may be provided only if the homeowner has a back-end ratio or debt-to-income (DTI) below 55 percent (principal, interest, taxes, insurance, revolving and fixed installment debt divided by total monthly income). For this calculation, the homeowner's income will be measured at the pre-Event level. Homeowners with second mortgage debt or equity lines of credit may qualify for emergency assistance if the homeowner's DTI is within the program's 55 percent limit.
- The rule includes monitoring requirements to ensure that the homeowner remains eligible for the emergency assistance after such assistance has commenced, and also specifies the conditions under which emergency assistance to the homeowner will be terminated.
- The rule adds a declining balance, nonrecourse, zero interest, subordinate secured loan, with a term of up to 7 years, as a type of repayment mechanism for emergency mortgage relief payments.
- The rule codifies the provision of the 1975 Act that authorizes the Secretary to delegate and accept certifications with respect to the processing of emergency mortgage relief payments as may be appropriate to facilitate the prompt and efficient implementation of this type of emergency assistance.
- The 1975 regulations made reference to the Soldier's and Sailor's Civil Relief Act of 1940, and the rule updates the reference to this statute to reflect its successor statute, which is the Servicemembers Civil Relief Act of 2003.

III. Notice of Program Activation and Fund Availability

Elsewhere in today's **Federal Register**, HUD is publishing a notice consistent with § 2700.10, which formally announces that EHLP has been activated, and describes the emergency assistance being made available in this FY 2011 reactivation of the program. While the regulations allow for the Secretary to choose among several tools to provide emergency homeowners' relief, only those tools that are provided in the notice are being used to provide emergency homeowner relief in FY 2011. HUD's position is that, given funding for EHLP is available for one fiscal year, the requirements for the emergency assistance to be provided must be firmly established at the outset of the commencement of the program; that is, with the issuance of the **Federal Register** notice. HUD believes the program, as reactivated for FY 2011, through the **Federal Register** notice, provides the relief contemplated by the Dodd-Frank Act.

IV. Findings and Certifications

Justification for Interim Rule

Consistent with its regulations on rulemaking at 24 CFR part 10, HUD ordinarily publishes its rules for advance public comment. Advance notice and public procedure are omitted, however, if HUD determines that, in a particular case or class of cases, notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." (*See* 24 CFR 10.1.) In this case, HUD finds that to wait for public comment before making

emergency assistance available under the Emergency Homeowners' Relief Act would be contrary to the public interest, and inconsistent with the statutory objective, which is for the program to be a source of authority by which the Secretary of HUD can immediately act.

Funds became available for this program on October 1, 2010, and, as noted earlier in this preamble, HUD must enter into binding agreements with approved homeowners no later than by September 30, 2011. Given this statutory deadline, HUD believes homeowners who HUD could help under this program may be victims of foreclosure if the program is not commenced as quickly as possible. Accordingly, HUD finds that it is important that interested lenders and homeowners know that the program requirements are set for this first year and will not be changed.

While HUD is issuing this rule for effect, HUD is also soliciting public comment. Although HUD is soliciting public comment on the 1975 regulations, reinstated with modifications, and the reactivated program overall, HUD is not anticipating making significant changes to the requirements governing the type of emergency assistance provided under EHLP for FY 2011. As noted earlier, HUD's position is that, given funding for EHLP is available for one fiscal year, the requirements for the emergency assistance to be provided must be firmly established at the outset of the commencement of the program; that is, with the issuance of the companion **Federal Register** notice. HUD believes the program, as reactivated for FY 2011, through the **Federal Register** notice, provides the relief contemplated by the Dodd-Frank Act. However, if a commenter, participating lender, eligible borrower, or potential eligible borrower identifies an aspect of the program for which a change would help facilitate assistance to eligible homeowners or provide further protections against waste, fraud, and abuse, HUD will make the necessary change. Further, if funding is provided for EHLP beyond FY 2011, HUD will consider the comments received in its reevaluation of the program, following this first year of reactivation, and make such changes based on public comment and the experience of administering EHLP emergency assistance in FY 2011.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). This rule was determined to be an economically significant regulatory act under Executive Order 12866.

The program that is reactivated under the regulations established by this rule is intended to assist a segment of delinquent homeowners who face a high probability of foreclosure and have become delinquent due to a temporary loss of income. It is expected that the assisted households can recover financially within 24 months. The benefits of this program include the avoidance of costs associated with foreclosure by lenders, homeowners facing foreclosure, neighbors of the foreclosed property, and local governments. Overall, the benefits are estimated to be between $1.7 billion and $3.4 billion, offset by the costs of administration, namely selecting participants ($87.3 million) and servicing the EHLP loans ($7.4 million to $11.3 million), and up to $23.96 million of incremental costs of foreclosure to lenders caused by borrowers assisted by EHLP who subsequently default anyway. In addition, participants in this program receive a transfer ranging from $28.32 million to $43.3 million, which is equal to the government's cost of borrowing the funds.

Participation in the EHLP program requires households to be at least 3 months delinquent. Assuming that participating homeowners are on average 5 months delinquent, this would add $8,778 to the total loan amount, for an overall total of $26,148. With a program limit of approximately $901 million available for loans to homeowners, after subtracting administrative costs, this would assist a maximum of 34,474 homeowners. This assessment calculates the benefits, costs, and transfers assuming that a range of 22,546 and 34,474 homeowners receive EHLP loans.

The full Regulatory Impact Analysis can be found at *http://www.hud.gov/offices/adm/hudclips/ia/* and is also contained in the docket file for this rule, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b) for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either, on the one hand, imposes substantial direct compliance costs on State and local governments and is not required by statute, or, on the other hand, the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or Tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Congressional Review Act

This rule constitutes a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8). The Congressional Review Act provides for major rules to have a 60-day delayed effective date. However, section 808 of the Congressional Review Act provides that the 60-day delayed effective date can be waived for good cause, and the agency issuing the major rule is to incorporate the good cause finding and provide a brief statement of reasons that

notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The reasons provided in the section of the preamble pertaining to Justification for Interim Rule serve as the justification for abbreviating the delayed effective date from 60 days to 30 days. As provided in that section, this rule provides for emergency relief to unemployed and underemployed homeowners, but further provides that such emergency relief is available only through September 30, 2011. For these reasons, HUD believes it is contrary to the public interest to delay the availability of emergency relief for a period of 60 days. HUD also notes that, although this rule is issued for effect, HUD is soliciting public comment.

List of Subjects in 24 CFR Part 2700

Administrative procedures, Mortgage insurance, Practice and procedure, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD is establishing a new chapter XV in title 24 of the Code of Federal Regulations, consisting of part 2700 to read as follows:

Title 24—Housing and Urban Development

Chapter XV—Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development

PART 2700—EMERGENCY HOMEOWNERS' LOAN PROGRAM

Subpart A—General

Subpart B—Eligibility

Subpart C—Emergency Assistance

Subpart D—Mortgage Insurance

Subpart E—Direct Loans

Authority: 12 U.S.C. 2707; 42 U.S.C. 3535(d)

Subpart A—General

§ 2700.1 Purpose.

This part establishes the Emergency Homeowners' Loan Program, a standby program authorized by the Emergency Homeowners Relief Act of 1975, as amended, to prevent widespread mortgage foreclosures and distress sales of homes resulting from a homeowner's substantial reduction in income due to temporary involuntary loss of employment or underemployment resulting from adverse economic conditions or medical condition. Under this program, HUD is authorized to provide relief in the forms of emergency mortgage relief loans, advances of credit, or emergency mortgage relief payments to struggling unemployed or underemployed homeowners to help them avoid foreclosure, provided the homeowner meets certain specific conditions. HUD may provide such relief through approved institutions, including lending institutions, or intermediaries designated by HUD. HUD is also authorized to allow assistance under this program to be administered by a State that has an existing program that is determined by HUD to provide substantially similar assistance to homeowners.

§ 2700.5 Definitions.

For purposes of this part, the following terms are defined as follows:

Act means the Emergency Homeowners' Relief Act, title I of the Emergency Housing Act of 1975 (12 U.S.C. 2701), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010).

Area Median Income (AMI) means the median family income for the metropolitan statistical area (MSA) or statewide nonmetropolitan area, as most recently determined and published by HUD, where the property meeting the eligibility requirements in § 2700.1 is located.

Delinquent mortgage means a first-lien mortgage secured by property meeting the eligibility requirements in § 2700.101, where the homeowner and holder of the delinquent mortgage have certified that circumstances, including delinquent payments of at least 3 months, make it probable there will be a foreclosure and that the homeowner is in need of emergency mortgage relief.

Emergency assistance includes, but is not limited to, an emergency mortgage relief loan, advance of credit, or emergency mortgage relief payment provided to an eligible homeowner, as authorized by the Act, and in accordance with the requirements of this part.

Event refers to the involuntary unemployment or underemployment status of the homeowner due to adverse economic conditions or medical condition. *See* definition of i*nvoluntary unemployment or underemployment due to adverse economic conditions or adverse medical condition.*

Finance charge means the cost of credit as determined in 12 CFR 226.4, a section in Regulation Z of the Federal Reserve System's regulations on Truth in Lending.

Homeowner means an individual with a mortgage on the individual's principal residence, in which the individual resides, and who meets the requirements of § 2700.10 and who is in need of emergency assistance pursuant to this part.

HUD means the Department of Housing and Urban Development.

Income means the cumulative annual adjusted gross income of the homeowner, co-makers, and co-signers on the note secured by the delinquent mortgage and the other mortgagors on the delinquent mortgage.

Involuntary unemployment or underemployment due to adverse economic conditions or adverse medical condition means the status of a homeowner who was working, either as a wage or salaried worker or through self-employment, is currently involuntarily unemployed or underemployed due to adverse economic conditions or medical condition, and is unable to meet the homeowner's monthly mortgage payments.

Lender means a lending institution that provides an emergency mortgage relief loan or advance of credit insured under this part.

Monthly income means one-twelfth of the *income,* as *income* is defined in this section.

Monthly mortgage payment means the monthly amount of principal, interest, taxes, ground rents, hazard insurance, and mortgage insurance premiums due to be paid under a homeowner's delinquent mortgage.

Mortgage means any mortgage, deed of trust, executor land sales contract, conditional sales contract, or other form of security and the obligation secured by a one- to four-family dwelling that is either real estate or a manufactured home. *Mortgage* includes a mortgage on a condominium unit and a security interest in stock in a housing cooperative.

Mortgagee means a lending institution that is the holder of the delinquent mortgage. The *mortgagee* may be the same entity as the *Lender.*

Secretary means the Secretary of Housing and Urban Development.

Servicer means any entity which services an emergency loan made by HUD under this part.

Servicing institution means any entity that services the delinquent mortgage. The servicing institution may also be the same entity as the Lender or Servicer.

Term of monthly payments means a period of monthly payments provided under this part not to exceed 24 months. Eligible homeowners may receive assistance for up to 12 months, and in accordance with criteria established by HUD, and such assistance may be extended once for up to 12 additional months, but in no case may monthly payments under this part exceed 24 months. The eligible homeowner may also receive assistance in an amount up to the statutory ceiling of $50,000, whichever occurs first.

§ 2700.10 Determination of emergency.

(a) The Secretary is authorized to provide emergency assistance under the Emergency Homeowners' Loan Program when:

(1) Funds have been explicitly appropriated or made available for this program and the statute making funding available directs the Secretary to commence making emergency assistance available to homeowners; or

(2) The Secretary has announced that this program has been activated and provides the reasons for activation of this program in a document published in the **Federal Register**.

(b) If the Emergency Homeowners' Loan Program is activated pursuant to paragraph (a) of this section, HUD shall publish a document in the **Federal Register** announcing the activation of the program and inviting one or more categories of eligible institutions, as defined in § 2700.105, to participate in the Emergency Homeowners' Loan Program, to provide such emergency assistance as HUD may designate from among the eligible types of emergency relief provided in § 2700.201, and provide such other information regarding participation in the program, as necessary and appropriate.

Subpart B—Eligibility

§ 2700.101 Eligible properties.

(a) In order to qualify for an emergency assistance under this part, the property of the homeowner seeking assistance must:

(1) Be a single-family residence in a one-to-four unit building, or a condominium or a housing cooperative or a manufactured home;

(2) Be the principal residence of the homeowner, which means it is the residence where the homeowner resides;

(3) Be subject to a delinquent mortgage, as defined in § 2700.5, but not, unless otherwise specified by HUD, subject to liens having a total outstanding principal balance, as specified by HUD;

(4) Have flood insurance, pursuant to the National Flood Insurance Program, in an amount equal to at least the initial principal amount of the emergency loan, if the property is located in an area that has been identified by HUD at least one year before the origination of the emergency loan as an area having special flood hazards; and

(5) Meet such other requirements as may be prescribed by HUD for reasons including, but not limited to, the particular economic circumstances in which emergency assistance is being made available, or the type of emergency assistance being made available.

(b) A property that meets the requirements of paragraph (a) of this section is referred to as the mortgaged property.

§ 2700.105 Eligible institutions.

(a) *Eligible lending institutions.* (1) In order to participate in the Emergency Homeowners' Loan Program as a lender or servicer, a lending institution must be approved as a mortgagee by the Federal Housing Administration in accordance with the applicable requirements in 24 CFR part 203, and meet such other requirements as may be prescribed by HUD as necessary or appropriate for participation in the Emergency Homeowners' Loan Program.

(2) Approval of a lending institution pursuant to paragraph (a)(1) of this section may be withdrawn at any time by notice from HUD for the following reasons:

(i) The transfer of an insured emergency mortgage relief loan or advance of credit to a nonapproved entity;

(ii) The failure of a lending institution to submit the required annual audit report of its financial condition within 75 days of the close of its fiscal year, or within such other period as may be specified by HUD; or

(iii) The failure of a lending institution to comply with the regulations of this part, or such additional program policies or requirements as specified by HUD. Withdrawal of a lending institution's approval shall not affect the insurance on the emergency mortgage relief loans or advances of credit accepted for insurance.

(3) All approved lending institutions are responsible for servicing of emergency mortgage relief loans and advances of credit in accordance with acceptable mortgage practices of prudent lending institutions and pursuant to 24 CFR part 203.

(b) *Eligible participating organizations.* HUD may delegate authority with respect to the processing of emergency mortgage relief payments as may be appropriate to facilitate the prompt and efficient implementation of assistance under the Emergency Homeowners' Loan Program.

(c) *States with comparable programs.* HUD is authorized to allow funding for the Emergency Homeowners' Loan Program to be administered by a State that has an existing program that is determined by HUD to provide substantially similar assistance to homeowners. After such determination is made, any State that HUD authorizes to administer funding under this program shall not be required to modify its own program to comply with the provisions of this part.

§ 2700.110 Eligible homeowners.

In order to qualify for an emergency assistance under this part, the homeowner must:

(a) Have a total pre-Event income that is equal to, or less than, 120 percent of the area median income (AMI).

(b) Have incurred a substantial reduction of income as evidenced by current monthly income that is at least 15 percent lower than the pre-Event income, as a result of involuntary unemployment or underemployment due to adverse economic or medical conditions, or such other reduction in income as may be specified by HUD.

(c) Have a delinquent mortgage, as defined in § 2700.5;

(d) Be financially unable at the time of application for emergency relief under this part to make full monthly mortgage payments;

(e) Have a reasonable likelihood to resume full monthly mortgage payments, and repay the emergency assistance pursuant to the terms and

conditions under which the emergency assistance was made available to the homeowner. The standard for meeting this requirement is debt-to-income (DTI) ratio. The homeowner must have a back-end ratio of below 55 percent (principal, interest, taxes, insurance, revolving and fixed installment debt divided by total monthly income), or such other DTI as may be specified by HUD. For this DTI calculation, income will be measured at the pre-Event level.

(f) Have not received other emergency assistance pursuant to this part;

(g) Have been notified that the mortgagee intends to foreclose;

(h) Produce a certification from the mortgagee in which the homeowner also certifies that circumstances make it probable that the mortgagee will foreclose on the homeowner's delinquent mortgage; and

(i) Meet such other requirements as may be prescribed by HUD for reasons including, but not limited to, the particular economic circumstances in which emergency assistance is being made available, or the type of emergency assistance being made available.

Subpart C—Emergency Assistance

§ 2700.201 Types and terms of emergency assistance.

(a) *Types of emergency assistance.* Emergency assistance may be provided to an eligible homeowner in the form of emergency mortgage relief loans and advances of credit, or in the form of emergency mortgage relief payments. In accordance with § 2700.205, the aggregate amount of assistance provided for any eligible homeowner shall not exceed $50,000 or extend beyond the term of monthly payments, as defined in § 2700.5.

(1) *Emergency mortgage loans and advances.* HUD is authorized, upon such terms and conditions as specified by HUD, to insure financial institutions, which HUD finds to be qualified by experience and facilities and approves as eligible for insurance, against losses that they may sustain as a result of providing emergency mortgage relief loans or advances of credit made under this part.

(2) *Emergency mortgage relief payments.* (i) HUD is authorized to make emergency relief payments under such terms and conditions as HUD may prescribe. Emergency mortgage relief payments may be provided:

(A) As payment of 100 percent of an eligible homeowner's delinquent mortgage arrearages, which may include mortgage principal, interest, insurance, taxes, hazard insurance, ground rent, homeowners' assessment fees or condominium fees, and foreclosure-related legal fees and late payments, in accordance with such terms and conditions as prescribed by HUD; and

(B) As monthly payments due on such delinquent mortgage, for up to a period not to exceed the term of monthly payments, as provided in § 2700.5.

(ii) Such emergency mortgage relief payments may be repayable in the form of a declining balance, non-recourse, zero-interest, subordinate loan secured by the same property securing the delinquent mortgage, for a term of up to 7 years.

(3) *Direct payments to mortgagees.* HUD is authorized to make direct emergency mortgage relief payments to a mortgagee that elects not to participate in the Emergency Homeowners' Loan program as an approved mortgagee on behalf of homeowners:

(i) Whose mortgages are held by such mortgagee; and

(ii) Who meet the requirements of § 2700.110.

(b) *Terms and conditions of assistance.* Emergency mortgage relief loans and advances of credit made and insured under this part, and emergency mortgage relief payments made under this part, shall be repayable by the homeowner upon such terms and conditions prescribed by HUD, except that:

(1) The rate of interest on any emergency mortgage relief loan or advance of credit insured shall be fixed for the life of the emergency mortgage relief loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Federal Housing Administration under title II of the National Housing Act at the time such emergency mortgage relief loan or advance of credit is made;

(2) No interest shall be charged on interest that is deferred on an emergency mortgage relief loan or advance of credit made under this part. In establishing rates, terms, and conditions for emergency mortgage relief loans or advances of credit, HUD shall take into account a homeowner's ability to repay such emergency mortgage relief loan or advance of credit;

(3) Any mortgage insurance premium charge or charges for any emergency mortgage relief loan or advance of credit made under this part shall not exceed an amount equivalent to one-half of one percent per annum of the principal obligation of such emergency mortgage relief loan or advance of credit outstanding at any one time;

(4) Unless otherwise specified by HUD for a given fiscal year, the homeowner's contribution to the monthly mortgage payment will be set at 31 percent of monthly income at the time of the application for assistance, but in no instance will such contribution to the monthly mortgage payment be less than $25 per month;

(5) The homeowner may repay the emergency mortgage relief loan or advance of credit in full, without penalty, by lump sum or by installment payments at any time before the emergency mortgage relief loan or advance of credit becomes due and payable; and

(6) With respect to the emergency mortgage relief payments repayable in the form of a declining balance, non-recourse, zero-interest, subordinate loan as described § 2700.201(a)(2), no payment shall be due by the homeowner during the term of the loan so long as the homeowner remains current in his or her monthly homeowner contribution payments on the delinquent mortgage. If the homeowner meets this requirement, the balance due shall decline by such percentage as may be designated by HUD, until the loan is fully satisfied.

(c) *Termination of emergency assistance.* Emergency assistance provided to a homeowner shall be terminated and the homeowner shall resume full responsibility for meeting the first mortgage payments if any of the following occur:

(1) The maximum loan amount ($50,000) has been provided to the homeowner;

(2) The homeowner fails to report changes in employment status or income within 15 days of the change;

(3) The homeowner's income increases to 85 percent or more of its pre-Event income level, or such other percentage as may be prescribed by HUD;

(4) The homeowner sells the mortgaged property or refinances the mortgaged property for cash-out;

(5) The homeowner defaults on the monthly homeowner's contribution payment on the delinquent mortgage;

(6) The homeowner has exhausted the full term of monthly payments, as defined in § 2700.5; or

(7) Such other event as may be specified by HUD.

(d) *Deferral of commencement of repayment.* HUD may authorize the deferral of the commencement of the repayment of an emergency mortgage relief loan or advance of credit or emergency mortgage relief payments made under this part until one year following the date of the last disbursement of the proceeds of the

emergency mortgage relief loan or advance of credit or emergency mortgage relief payments, or for such longer period as HUD determines would further the purpose of the Emergency Homeowners' Loan Program.

§ 2700.205 Emergency assistance amount.

(a) Emergency assistance to an eligible homeowner may be made available in an amount up to the amount of the principal, interest, taxes, ground rents, hazard insurance, and mortgage insurance premiums due under the homeowner's mortgage and such other costs as may be specified by HUD. The amount of emergency assistance provided to the homeowner shall be an amount that is determined by HUD to be reasonably necessary to supplement such amount as the homeowner is capable of contributing toward the homeowner's delinquent first mortgage payments, except that the aggregate amount of emergency relief provided to any homeowner shall not exceed $50,000, including any fees allowed under §§ 2700.310(a) and 2700.415(a).

(b) Arrearage payments and monthly assistance payments may be made either with the proceeds of an insured emergency mortgage relief loan or advance of credit or with emergency mortgage relief payments for up to full term of the monthly payments, as defined in § 2700.5.

(c) Unless otherwise authorized by HUD, the lender or servicer shall not approve an emergency mortgage loan or advance of credit when the outstanding balance, including delinquent interest, of the delinquent mortgage when added to the other liens against the mortgaged property, plus the maximum emergency mortgage relief loan that may be advanced to the homeowner under this part, exceeds the value of the mortgaged property. (In determining the value of the property, the lender or servicer may rely upon previously obtained appraisals or other determinations of value of the property and need not obtain a current appraisal.)

§ 2700.210 Finance charges.

The maximum permissible finance charge, exclusive of fees and charges as provided in §§ 2700.310, and 2700.415, which may directly or indirectly be paid to or collected by the lender or the servicer in connection with an emergency mortgage relief loan or advance-of-credit transaction, shall not exceed simple interest on the outstanding principal balance at the annual interest rate for FHA-insured home mortgages at such time the emergency mortgage relief loan or advance of credit is originated. Additionally, no points or discounts of any kind may be assessed or collected in connection with an emergency mortgage relief loan or advance-of-credit transaction.

Subpart D—Mortgage Insurance

§ 2700.301 Loan applications.

(a) Lending institutions approved by HUD for participation in the Emergency Homeowners' Loan Program are authorized to accept, process, and approve applications for emergency mortgage relief loans or advances of credit under this part under such terms and conditions as HUD may prescribe.

(b) An approved lender may make an emergency mortgage relief loan or advances of credit on the terms specified in this part if the lender is satisfied that the application meets all of the relevant requirements of this part. The lender shall prepare a note, loan agreement, if any, and mortgage as required by HUD, which the lender shall record against the property securing the delinquent mortgage upon the execution of those documents.

(c) Except as may be otherwise specified by HUD, on the last working day of the month during which an emergency mortgage relief loan or advance of credit is closed, the lender shall submit to HUD an application for an insured emergency mortgage relief loan or advance of credit on such form as prescribed by HUD, signed by the mortgagor and holder of the mortgage and that certifies that:

(1) The lender, homeowner, and property meet the eligibility requirements of this part;

(2) Circumstances (such as the volume of delinquent loans in the investor's portfolio likely to remain uncured) make it probable that there would be a foreclosure of the delinquent mortgage if the emergency mortgage relief were not provided to the homeowner;

(3) The homeowner is in need of such emergency assistance and the mortgagee has indicated to the homeowner its intention to foreclose on the delinquent mortgage; and

(4) The first disbursement of the principal amount of the emergency mortgage relief loan or advance of credit has been paid or credited to the homeowner's account with the servicing institution.

§ 2700.305 Conditions of insurance.

(a) When the requirements of this part have been met, the lender's mortgage insurance coverage under its mortgage insurance contract will apply to a particular loan as of the date of closing, if the lender has not exceeded the mortgage insurance authority allocation which HUD has given the lender.

(b) From the effective date of the emergency mortgage relief loan or advance of credit until the termination of the insurance with respect to that loan, the lender shall be bound by the provisions of this part as such provisions relate to the emergency mortgage relief loan or advance of credit.

§ 2700.310 Fees.

(a) The lender may collect from the homeowner during the year following the origination of the emergency mortgage relief loan or advance of credit the following fees or charges in conjunction with providing the emergency mortgage relief loan or advance of credit:

(l) A charge to compensate the lender for expenses incurred in originating and closing the emergency relief loan, including preparation of a note, loan agreement, if any, and a mortgage in a form satisfactory for recordation, the total charge not to exceed such amount as specified by HUD;

(2) Actual amounts charged by State or local governments or government officials for recording fees and recording taxes or other charges incident to making the emergency relief loan or advance of credit;

(3) An amount equal to the annual premium for flood insurance required by § 2700.101(a)(4) (the lender shall pay the homeowner's flood insurance premium for that year to the extent it collects such an amount); and

(4) An amount equal to the annual mortgage insurance premium required under § 2700.315.

(b) Subsequent to the year following the origination of the emergency mortgage relief loan or advance of credit and up to the termination of mortgage insurance under § 2700.325, the lender may collect from the homeowner the following fees and charges in connection with the emergency relief loan: An amount equal to the mortgage insurance premium required under § 2700.315.

§ 2700.315 Insurance premium.

(a) At such times as may be prescribed by HUD, the participating lender shall pay to HUD a mortgage insurance premium equal to one-half of one percent of the average outstanding balance of the emergency mortgage relief loan or advance of credit, during the previous calendar year, of all emergency mortgage relief loans or advances of credit that the lender held or serviced during that period pursuant to this part.

(b) With respect to the payment provided for in paragraph (a) of this section, the lender shall submit a breakdown of the mortgage insurance premium in the form prescribed by HUD.

(c) If a mortgage securing an emergency mortgage relief loan or advance of credit is sold, assigned, or pledged pursuant to § 2700.350, any adjustments of the mortgage insurance premium already paid in connection with a mortgage securing an emergency mortgage relief loan or advance of credit shall be made by and between the lenders, except that any unpaid installments of the mortgage insurance premium shall be paid to HUD by the purchasing lender.

(d) There shall be no refund or abatement of any portion of the insurance premium except when the mortgage insurance premium relates to an emergency mortgage relief loan or advance of credit found to be ineligible. However, no refund shall be made unless a claim is denied by HUD or the ineligibility is reported by the lender promptly upon discovery and an application for refund is made. In no event shall charges be refunded when the application for refund is not made until after the emergency mortgage relief loan or advance of credit is paid in full.

§ 2700.320 Servicing.

Servicing functions for the emergency mortgage relief loan or advance of credit during the period that the emergency loan or advance is insured shall be performed by the lender or the servicing institution acting for the lender. The lender is responsible for proper servicing, even though the actual servicing is not performed by the lender.

§ 2700.325 Termination of mortgage insurance.

The mortgage insurance coverage and the insured lender's obligation to remit mortgage insurance premiums to HUD with respect to an emergency mortgage relief loan or advance of credit shall be terminated upon whichever of the following first occurs:

(a) The emergency mortgage relief loan or advance of credit is paid in full;

(b) The lender acquires the mortgaged property securing the emergency mortgage relief loan or advance of credit and notifies HUD that no claim for insurance benefits has been or will be made;

(c) The homeowner and the lender jointly request termination; or

(d) The lender files an insurance claim pursuant to § 2700.335.

§ 2700.330 Default.

(a) If the homeowner fails to make a scheduled payment or perform any other obligation required for the type of emergency assistance provided under this part, the homeowner shall be deemed to be in default.

(b) For purposes of this subpart, the date of default shall be the earliest of:

(1) 30 days after the first day the homeowner is delinquent on the mortgage securing the emergency mortgage relief loan or advance of credit, if the delinquency remains uncorrected;

(2) The date the property securing the emergency mortgage relief loan or advance of credit is sold before full repayment of the emergency loan or advance of credit; and

(3) The date a lien superior to that securing the emergency mortgage relief loan or advance of credit is foreclosed.

(c) If, after default and prior to the foreclosure of the mortgage securing the emergency mortgage relief loan or advance of credit, the homeowner cures the default, the emergency loan or advance of credit shall be treated as if a default had not occurred, provided the homeowner pays the lender for any expenses the lender incurred in connection with the lender's attempt to collect on the emergency mortgage relief loan or advance of credit.

§ 2700.335 Claims.

(a) Claims for mortgage insurance for reimbursement for loss on an emergency mortgage relief loan or advance of credit shall be made in such form and provide such information as specified by HUD.

(b) Claims may be filed upon the homeowner's default on the emergency mortgage relief loan or advance of credit.

(c) When the homeowner defaults on the emergency mortgage relief loan or advance of credit, the lender may elect to:

(1) Proceed against the mortgage securing the emergency mortgage relief loan or advance of credit or attempt to collect on the note and then make a claim under its insurance contract if there is any net loss, or

(2) Make a claim under its mortgage insurance contract without proceeding against the security or the note.

(d) Except as may be otherwise specified by HUD, mortgage insurance claims shall be filed on the last working day of the month, no later than 90 days after the date of default, unless the lender proceeds against the mortgage securing the emergency relief loan or advance of credit, in which case the filing shall be no later than one year after the date of default, or such other time period as approved by HUD. If at the time of default or at any time subsequent to the default, a person primarily or secondarily liable for the repayment of a loan is a person in "military service", as such term is defined in the Servicemembers Civil Relief Act of 2003 (Pub. L. 108–189, approved December 19, 2003) (formerly known as Soldier's and Sailor's Civil Relief Act of 1940) (50 U.S.C. app. 501–594), the lender shall refrain from instituting foreclosure proceedings during the period in which the servicemember is in military service and 3 months thereafter and that period shall be excluded in computing the time within which a claim for insurance benefits under this subpart may be made.

(e) An insured lender will be reimbursed for its losses on emergency mortgage relief loans and advances of credit made in accordance with this part, in an amount equal to 90 percent of the sum of the following:

(1) The unpaid principal amount of the emergency mortgage relief loan or advance of credit less the amount recovered;

(2) The uncollected interest earned up to the date of claim;

(3) Uncollected court costs, including fees paid for issuing, serving, and filing summonses;

(4) Attorney's fees actually paid, not exceeding the lesser of:

(i) 25 percent of the amount collected by the attorney on the defaulted note, or

(ii) 15 percent of the balance due on the note; and

(5) Expenses actually incurred in recording assignments of mortgages to the United States of America, up to such amount as specified by HUD.

(f) The note and any mortgage held or judgment taken by the claimant must be assigned in its entirety and if any claim has been filed in bankruptcy, insolvency, or probate proceedings, such claim shall be likewise assigned to the United States of America. The assignment shall be in the form approved by HUD.

§ 2700.340 Payment of insurance benefits.

Upon receipt of a claim for insurance benefits that meets the requirements of § 2700.335 and the other provisions of this part, HUD shall make a payment of insurance benefits in cash to the claimant in an amount equal to the amount specified in § 2700.335(e).

§ 2700.345 Administrative reports and examinations.

At any time, HUD may call upon an insured lender for such reports as are deemed to be necessary in connection

with the regulations of this part and may inspect the books or accounts of the lender as they pertain to the emergency mortgage relief loans or advances of credit that are insured pursuant to this subpart.

§ 2700.350 Sale, assignment, and pledge of insured loan.

(a) No lender may sell or otherwise dispose of any insured emergency mortgage relief loan or advance of credit except pursuant to this section.

(b) An insured emergency mortgage relief loan or advance of credit may be sold to a lending institution eligible under § 2700.105. Upon such sale, both the seller and the buyer shall notify HUD within 30 days of the date of sale.

(c) When an insured emergency mortgage relief loan or advance of credit is sold to another lending institution eligible under § 2700.105, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance under this part, and the seller shall be released from its obligations under the contract of insurance.

(d) An assignment, pledge, or transfer of an insured emergency mortgage relief loan or advance of credit not constituting an actual transfer of legal title may be made by the lender to another eligible lending institution, subject to the following conditions:

(1) The assignor, pledgor, or transferor shall remain the lender for purposes of the contract of insurance under this part.

(2) HUD shall have no obligation to recognize or deal with any party other than that lender with respect to the rights, benefits, and obligations of the lender under the contract of insurance. Notice to or approval of HUD is not required in connection with assignments, pledges, or transfers pursuant to this subpart.

Subpart E—Direct Loans

§ 2700.401 Participation by lending institutions.

A lending institution eligible under § 2700.105 is authorized, except as may be otherwise prescribed by HUD, to accept, process, and approve applications for direct loans under this subpart in the form specified. That authority includes making determinations relating to the eligibility of the direct loan, homeowner, and property, pursuant to the provisions of this part. Direct loans, however, may be made pursuant to this part only when the investor cannot make an emergency loan under subpart D of this part for good cause, as determined by HUD.

§ 2700.405 Application for loans.

(a) The agreement to process an application for a direct loan shall constitute an acceptance of the lending institution of the responsibility to act as the servicer of HUD with respect to that particular application. The servicer shall make a loan on behalf of HUD on the terms specified in subpart C of this part if the lending institution is satisfied that the application meets all of the requirements of this part.

(b) The servicer shall prepare a note, loan agreement, if any, and mortgage in the form specified in § 2700.201. The servicer shall record the mortgage upon the closing of the loan. The servicer shall make the first advance of the loan, as provided for in § 2700.201(d), using its own funds.

(c) On the last working day of the month during which the loan is closed, the servicer shall submit to HUD a copy of the application signed by the agent and the homeowner certifying that: The agent, homeowner, and property qualify under subpart B of this part; circumstances (such as the volume of delinquent loans in the investor's portfolio likely to remain uncured) make it probable that there would be a foreclosure if emergency mortgage relief were not given; the homeowner is in need of such relief; the investor has indicated to the homeowner its intention to foreclose; and the first advance of the emergency loan has been paid or credited to the homeowner's account with the servicing institution.

§ 2700.410 Transmittal of funds.

(a) When the requirements of this part have been met, HUD will transmit to the servicer, pursuant to the monthly accounting prescribed in § 2700.420, the emergency loan proceeds, as long as the agent has not exceeded the lending authority allocation that HUD has given the servicer pursuant to § 2700.10(c).

(b) When the investor is the servicer, the transmittal of funds under this section shall be conditioned upon the investor's agreement, for a period up to one month after the last advance under the emergency mortgage relief loan, to refrain from instituting foreclosure proceedings against the homeowner, as long as the amount delinquent at the time of the origination of the emergency mortgage relief loan, excluding interest thereon, does not increase, unless HUD's prior approval is obtained.

(c) From the processing of the application until the satisfaction of the debt or the final accounting pursuant to § 2700.435, the servicer shall be bound by the provisions of this part with respect to a particular direct loan.

§ 2700.415 Fees.

(a) The servicer may collect from the homeowner during the year following the origination of the emergency loan the following fees or charges in conjunction with providing the emergency loan:

(1) A charge to compensate the servicer for expenses incurred in originating and closing the emergency mortgage relief loan, including preparation of a note, loan agreement, if any, and a mortgage in a form satisfactory for recordation, the total charge not to exceed such amount as may be specified by HUD;

(2) Actual amounts charged by State or local governments or government officials for recording fees and recording taxes or other charges incident to making the emergency loan;

(3) An amount equal to the annual premium for flood insurance required by § 2700.101(c) (the servicer shall pay the homeowner's flood insurance premium for that year to the extent it collects such an amount); and

(4) An amount equal to the annual premium required under § 2700.420(d).

(b) Subsequent to the year following the origination of the emergency mortgage relief loan and up to the final accounting on the emergency mortgage relief loan under § 2700.435, the servicer may collect from the homeowner the fees and charges as provided in this section.

§ 2700.420 Servicing.

(a) Servicing functions during the period that the emergency mortgage relief loan is outstanding shall be performed by the servicer.

(b) On the same day each month while the servicer is servicing emergency mortgage relief loans for HUD, the servicer shall submit a monthly accounting, in the form prescribed by HUD, for all of the emergency mortgage relief loans that it services. The accounting shall list the amount of funds that it advanced under emergency mortgage relief loans during the previous calendar month. In addition, the accounting shall list the amount paid to the servicer under the emergency mortgage relief loans serviced by the servicer during the previous calendar month.

(c) If, pursuant to the monthly accounting, the amount HUD owes the servicer exceeds the amount the servicer owes HUD, HUD shall remit the difference to the servicers, as long as HUD finds the accounting in order. If, pursuant to the monthly accounting, the amount the servicer owes HUD exceeds the amount HUD owes the servicer, the servicer shall remit the difference when

the servicer submits the monthly accounting to HUD.

(d) At such times as may be prescribed by HUD, the servicer, in addition to making its monthly accounting, shall pay to HUD a premium equal to one-half of one percent of the average outstanding balance during the previous calendar year of all the emergency mortgage relief loans it serviced during that period. That payment shall be accompanied by a breakdown of the premium in the form prescribed by HUD.

§ 2700.425 Default.

(a) If the homeowner fails to make any payment or to perform any other obligation under the mortgage securing the emergency mortgage relief loan, the homeowner shall be deemed to be delinquent on such loan.

(b) For purposes of this subpart, the date of default shall be the earliest of:

(1) 30 days after the first day the homeowner is delinquent on the emergency mortgage relief loan, if the delinquency remains uncorrected:

(2) The date the mortgaged property is sold before full repayment of the emergency mortgage relief loan; and

(3) The date a lien superior to that securing the emergency mortgage relief loan is foreclosed.

(c) If, after default and prior to the foreclosure of the mortgage securing the emergency mortgage relief loan, the homeowner cures the default, the emergency mortgage relief loan shall be treated as if the default had not occurred, provided the homeowner pays the servicer for any expenses the servicer incurred in connection with the servicer's attempt to collect on the loan.

§ 2700.430 Collection.

(a) If a homeowner defaults on an emergency mortgage loan, the servicer shall elect:

(1) To wait while the Department of Justice proceeds against the mortgage securing the emergency mortgage relief loan or attempts to collect on the note, and then to make an accounting and payment to HUD, as provided in § 2700.435, or

(2) To make an accounting and payment, as provided in § 2700.435, without waiting while the Department of Justice proceeds against the mortgage or note.

(b) If pursuant to paragraph (a) of this section, the servicer elects to make an accounting without waiting while the Department of Justice proceeds against the mortgage or note, the servicer at the time of that accounting will have the option of purchasing the emergency loan and underlying mortgage for a price equal to 0.5 times the unpaid principal balance.

§ 2700.435 Payment to HUD.

(a) Before the expiration of the period of 90 days after the date of default, or such other time period as HUD approves, the servicer shall transmit to HUD on the last working day of the month the complete credit and collection file pertaining to the emergency mortgage relief loan.

(b) At the same time the servicer makes the transmittal as provided in paragraph (a) of this section, it shall share the loss on the emergency mortgage relief loan by making a payment to HUD in an amount equal to 10 percent of the sum of:

(1) The unpaid principal amount of the emergency mortgage relief loan, less the amount recovered; and

(2) The uncollected interest earned up to the date of the final accounting. Accompanying that payment shall be a final accounting of the emergency mortgage relief loan, in the form specified by HUD, and the note and mortgage executed in connection with the emergency mortgage relief loan.

(c) Notwithstanding the provisions of paragraph (b) of this section, in the event that the aggregate loss borne by HUD reaches such percent, as specified in the **Federal Register** document activating the Emergency Homeowners' Loan Program, of the aggregate amount advanced by the servicer on behalf of HUD under this subpart, the servicer shall bear the burden of any loss in excess of that such percent by making an appropriate payment to HUD within the time period specified in paragraph (a) of this section.

(d) If at the time of default or at any time subsequent to default, a person primarily or secondarily liable for the repayment of an emergency loan is a person in "military service", as such term is defined in the Servicemembers Civil Relief Act of 2003 (Pub. L. 108–189, approved December 19, 2003) (formerly known as Soldier's and Sailor's Civil Relief Act of 1940) (50 U.S.C. app. 501–594), the period the servicemember is in military service and 3 months thereafter and that period shall be excluded in computing the time within which an accounting and payment are to be made pursuant to paragraph (a) of this section.

§ 2700.440 Administrative report and examinations.

HUD may at any time call for a report from any servicer on the delinquency status of the emergency mortgage relief loans serviced by the servicer on behalf of HUD or call for such reports as may be deemed to be necessary in connection with the provisions of this part, or HUD may inspect the books or accounts of the servicer as they pertain to those emergency mortgage relief loans.

Dated: February 28, 2011.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–4816 Filed 3–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9515]

RIN 1545–BH20

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations concerning the treatment of certain intercompany gain with respect to stock owned by members of a consolidated group. These regulations provide for the redetermination of intercompany gain as excluded from gross income in certain transactions involving stock transfers between members of a consolidated group. The temporary regulations contained in this document are solely for the purpose of retaining the portion of the existing temporary regulations that were in the same temporary regulation section but that are not being promulgated as final regulations at this time. These regulations affect corporations filing consolidated returns.

DATES: *Effective Date:* These regulations are effective on March 4, 2011.

Applicability Date: Section 1.1502–13(c)(6)(ii)(C), (c)(6)(ii)(D), and (c)(7)(ii), *Examples 16* and *17* apply with respect to items taken into account on or after March 4, 2011.

FOR FURTHER INFORMATION CONTACT: John F. Tarrant (202) 622–7790 or Lawrence M. Axelrod, (202) 622–7713 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2008, the IRS and the Treasury Department published temporary regulations § 1.1502–13T. *See*

TD 9383 (73 FR 12265–01), 2008–15 IRB 738. Also on March 7, 2008, the IRS and the Treasury Department published a notice of proposed rulemaking cross-referencing those temporary regulations. *See* REG–137573–07 (73 FR 12312–01), 2008–15 IRB 750.

The IRS and the Treasury Department did not receive written comments from the public during the prescribed comment period and no public hearing was requested or held. This Treasury decision adopts the proposed regulation (REG–137573–07) with the changes discussed in this preamble. In addition, this Treasury decision revises the temporary regulation, § 1.1502–13T.

Summary of Comments and Explanation of Revisions

Finalization of 2008 Temporary Regulations

The 2008 temporary regulations concern the treatment of certain intercompany gain with respect to consolidated group member stock. Section 1.1502–13 provides rules governing the timing and characterization of items resulting from transactions between consolidated group members. Section 1.1502–13(c) provides general rules under which the timing and character of those items can be deferred or recharacterized to clearly reflect the taxable income (and tax liability) of the group as a whole. These rules generally apply a "matching" principle under which the timing of inclusion of gain on the sale of property by the seller (S) is linked to the buyer's (B) recovery of its basis in the property and S and B's characterization are subject to redetermination in order to treat S and B as divisions of a single corporation.

The proposed regulations provide that intercompany gain with respect to member stock may be permanently excluded from gross income following certain stock basis elimination transactions (for example, tax-free spin-offs and liquidations). The IRS and the Treasury Department have reconsidered the requirement of the proposed regulations that, immediately before intercompany gain would otherwise be taken into account, the common parent (P) must be the member that holds the member stock with respect to which the intercompany gain was realized, and that the gain must be P's intercompany item. Given the other requirements of the regulation, namely that (i) the group has not and will not derive any Federal income tax benefit from the intercompany transaction; and (ii) the excluded gain will not be treated as tax-exempt income for purposes of the investment adjustment regulations—it is appropriate to provide relief where a member other than the common parent holds the subject stock. Accordingly, these final regulations allow the exclusion of gain where a member holds the target member stock with respect to which the intercompany gain was realized, and the holding member is either (i) B or S, as a successor to the other party (either B or S); or (ii) a third member that is the successor to both B and S.

The preamble to the proposed regulations requested comments as to whether the "Commissioner's Discretionary Rule" (§ 1.1502–13(c)(6)(ii)(D)) should be retained. The preamble also stated that the IRS and Treasury Department were considering eliminating the Commissioner's Discretionary Rule. Upon further consideration, the IRS and Treasury Department believe there may be circumstances where application of such discretion is warranted. Thus, for example, the final regulations do not provide automatic relief for transactions involving property other than member stock (such as the stock of non-members), but relief may be available after review by the IRS under the Commissioner's Discretionary Rule. Accordingly, the final regulations retain the Commissioner's Discretionary Rule in a form revised to describe the conditions to be satisfied for that discretion to be exercised, and to indicate that relief is available only through a request for a letter ruling.

Finally, the final regulations also expressly provide that the excluded gain is not treated as tax exempt income for purposes of § 1.1502–32 and does not increase earnings and profits.

Reordering of Regulation

On September 4, 2009, amendments to § 1.1502–13T were published in the **Federal Register** to modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation (the 2009 temporary regulations). A minor correction to the 2009 temporary regulations concerning the expiration date of the 2009 temporary regulations was published in the **Federal Register** on January 13, 2010. The changes made by the 2009 temporary regulations inadvertently appear in the wrong location in the official **Federal Register** version of § 1.1502–13T. Some tax services have these provisions in their intended places. In order to take into account the finalization of the 2008 temporary regulations, as described in this preamble, and to avoid confusion concerning the location of the amendments made by the 2009 temporary regulations, this document revises § 1.1502–13T and places the 2009 temporary regulations in the proper location. No substantive change is intended by this revision.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation primarily affects members of consolidated groups which tend to be large corporations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of this regulation is John F. Tarrant, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805. * * *

Section 1.1502–13 is also issued under 26 U.S.C. 1502.

■ **Par. 2.** Section 1.1502–13 is amended as follows:

■ 1. Entries for *Examples 16* and *17* are added to the table of examples for § 1.1502–13(c)(7)(ii) in paragraph (a)(6)(ii).

■ 2. Paragraphs (c)(6)(ii)(C), (c)(6)(ii)(D) are revised and *Examples 16* and *17* are added to paragraph (c)(7)(ii).
■ 3. Paragraph (c)(7(iii) is added.
■ 4. Paragraph (f)(7)(i) *Examples 8* and *9* and paragraph (f)(7(ii) are removed.
■ 5. Paragraph (f)(7)(i) is redesignated as (f)(7).

The revisions and additions read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *
(6) * * *
(ii) * * *
Matching rule (§ 1.1502–13(c)(7)(ii))
* * * * *

Example 16. Intercompany stock distribution followed by section 332 liquidation.

Example 17. Intercompany stock sale followed by section 355 distribution.

* * * * *

(c) * * *
(6) * * *
(ii) * * *

(C) *Certain intercompany gains on stock*—(*1*) *In general.* Notwithstanding paragraph (c)(6)(ii)(A)(*1*) of this section, intercompany gain with respect to a member's stock that was created by reason of an intercompany transfer of the stock, and that would not otherwise be taken into account upon a subsequent elimination of the stock's basis but for the transfer, is redetermined to be excluded from gross income if—

(*i*) B or S becomes a successor (as defined in paragraph (j)(2) of this section) to the other party (either B or S), or a third member becomes a successor to both B and S;

(*ii*) Immediately before the intercompany gain would be taken into account, the successor member holds the member's stock with respect to which the intercompany gain was realized;

(*iii*) The successor member's basis in the member's stock that reflects the intercompany gain that is taken into account is eliminated without the recognition of gain or loss (and such eliminated basis is not further reflected in the basis of any successor asset);

(*iv*) The effects of the intercompany transaction have not previously been reflected, directly or indirectly, on the group's consolidated return; and

(*v*) The group has not derived, and no taxpayer will derive, any Federal income tax benefit from the intercompany transaction that gave rise to the intercompany gain or the redetermination of the intercompany gain (including any adjustment to basis in member stock under § 1.1502–32). For this purpose, the redetermination of the intercompany gain is not itself considered a Federal income tax benefit.

(*2*) *Effect on earnings and profits and investment adjustments.* Any amount excluded from gross income under paragraph (c)(6)(ii)(C)(*1*) of this section shall not be taken account as earnings and profits of any member and shall not be treated as tax-exempt income under § 1.1502–32(b)(2)(ii).

(D) *Other amounts.* (*1*) The Commissioner may determine that treating S's intercompany item as excluded from gross income is consistent with the purposes of this section and other applicable provisions of the Internal Revenue Code, regulations, and published guidance, if the following conditions are met, depending on whether the intercompany item is an item of income or an item of gain,

(*i*) In the case of an intercompany item of income, the corresponding item is permanently disallowed; or

(*ii*) If the intercompany item constitutes gain, the conditions described in paragraphs (c)(6)(ii)(C)(*1*)(*iv*) and (c)(6)(ii)(C)(*1*)(*v*) of this section are satisfied.

(*2*) A determination by the Commissioner may be obtained only through a letter ruling request.

(*7*) * * *
(ii) * * *
* * * * *

Example 16. Intercompany stock distribution followed by section 332 liquidation. (a) *Facts.* P owns all of the stock of S, S owns all the stock of T, a member of the P group, and T owns all of the stock of T1, also a member of the P group. On January 1 of Year 1, S distributes all of the T stock to P in a distribution to which section 301 applies. At the time of this distribution, the value of the T stock is $100 and S has a $40 basis in the T stock. Under section 311(b), the distribution creates $60 of intercompany gain to S. Under section 301(d), P's basis in the T stock is $100. S will take its $60 intercompany gain into account under the matching rule. On January 1 of Year 4, in an independent transaction, S distributes all of its assets to P in a complete liquidation to which section 332 applies, and, under paragraph (j)(2) of this section, P succeeds to S's $60 gain. On January 1 of Year 7, T distributes all of its T1 stock to P in a transaction to which section 355 applies. At the time of this distribution, P has a basis in the T stock of $100, the value of the T stock (without regard to T1) is $75, and the value of the T1 stock is $25. Under section 358, P allocates $25 of its $100 basis in the T stock to the T1 stock, and, under paragraph (j)(1) of this section, the T1 stock becomes a successor asset to the T stock. On January 1 of Year 9, in an independent transaction, T distributes all of its assets to P in a complete liquidation to which section 332 applies.

(b) *Analysis.* Under paragraphs (b)(1) and (f)(2) of this section, S's distribution in Year 1 of the T stock to P is an intercompany transaction, S is the selling member, and P is the buying member. In Year 9 when T liquidates, P has no gain or loss under section 332. Under paragraph (b)(3)(ii) of this section, P's $0 gain or loss with respect to the T stock under section 332 is a corresponding item. P takes $45 (75/100 × $60) of its intercompany gain into account under the matching rule in Year 9 to reflect the difference between P's $0 of unrecognized gain and P's $45 of recomputed unrecognized gain. (If P and S were divisions of a single corporation, P would have had a $40 basis in the T stock, and, after the Year 7 distribution of the T1 stock, would have held the T stock with a $30 basis.) However, paragraph (c)(6) of this section does not prevent the redetermination of P's intercompany gain as excluded from gross income provided P succeeds to S's intercompany item; P and S are a single entity; P's basis in the T stock that reflects the $45 intercompany gain taken into account is eliminated without the recognition of gain or loss (and this eliminated basis is not further reflected in the basis of any successor asset); the group has not derived and no taxpayer will derive any Federal income tax benefit from the basis in the T stock and will not derive any Federal income tax benefit from a redetermination of this portion of the gain; and the effects of the intercompany transaction have not previously been reflected, directly or indirectly, on the P group's consolidated return. (*See* paragraph (c)(6)(ii)(C) of this section.) Accordingly, under paragraph (c)(6)(ii)(C) of this section, the $45 intercompany gain that P takes into account is redetermined to be excluded from gross income. P's basis in its T1 stock continues to reflect $15 of intercompany gain.

Example 17. Intercompany stock sale followed by section 355 distribution. (a) *Facts.* The facts are the same as *Example 16,* except that T does not distribute the stock of T1, instead, in Year 7, T makes a distribution of $50 to P in a transaction to which section 301 applies. Under § 1.1502–32, P's basis in its T stock is reduced by $50 and, under paragraph (f)(2)(ii) of this section, the intercompany distribution is excluded from P's gross income. Further, in Year 9, instead of liquidating T, P distributes the T stock to its shareholders in a transaction to which section 355 applies.

(b) *Analysis.* On the distribution of the T stock in Year 9, P has $0 of unrecognized gain under section 355(c). Under paragraph (b)(3)(ii) of this section, P's $0 of unrecognized gain or loss with respect to the T stock under section 355(c) is a corresponding item. P takes its $60 intercompany gain into account under the matching rule in Year 9 to reflect the difference between P's $0 of unrecognized gain and P's $60 of recomputed gain ($50 unrecognized gain and $10 recognized gain). (If P and S were divisions of a single corporation, P would have had a $40 basis in the T stock, and, after the Year 7 distribution, would have held the T stock with a $10 excess loss account.) *See* paragraph (f)(7), *Example* 2 of this section. Paragraph (c)(6) of this section does not prevent the redetermination of P's intercompany gain as

excluded from gross income provided P succeeds to S's intercompany item; P and S are a single entity; P's basis in the T stock that reflects the $60 intercompany gain taken into account is eliminated without the recognition of gain or loss (and this eliminated basis is not further reflected in any successor asset); the group has not derived any Federal income tax benefit from the basis in the T stock and will not derive any Federal income tax benefit from a redetermination of this portion of the gain; and the effects of the intercompany transaction have not previously been reflected, directly or indirectly, on the P group's consolidated return. (*See* paragraph (c)(6)(ii)(C) of this section.) The intercompany transaction with respect to the T stock resulted in an increase in the basis of the T stock, and this increase in the basis of the T stock prevented P from holding the T stock with a $10 excess loss account (as a result of the Year 7 distribution) at the time of the section 355 distribution. Accordingly, the group derived a Federal income tax benefit from the intercompany transaction to the extent of $10 and, under paragraph (c)(6)(ii)(C) of this section, only $50 of the $60 intercompany gain that P takes into account is redetermined to be excluded from gross income.

(c) *Application of section 355(e).* If it were determined that section 355(e) applied to P's distribution of the T stock, P would recognize $0 of gain and derive a Federal income tax benefit to the extent of the full $60 increase in the basis of the T stock. Therefore, no portion of P's intercompany gain would be redetermined to be excluded from gross income under paragraph (c)(6)(ii)(C) of this section.

(iii) *Effective/applicability date*—(A) *In general.* Paragraphs (c)(6)(ii)(C), (c)(6)(ii)(D), and (c)(7)(ii), *Examples 16* and *17* of this section apply with respect to items taken into account on or after March 4, 2011.

(B) *Prior periods.* For items taken into account on or after March 7, 2008, and before March 4, 2011, *see* § 1.1502–13T(c)(6)(ii)(C) and (f)(7), *Examples 7* and *8* as contained in 26 CFR part 1 in effect on April 1, 2009. For items taken into account before March 7, 2008, *see* § 1.1502–13 as contained in 26 CFR part 1 in effect on April 1, 2007.

* * * * *

■ **Par. 3.** Section 1.1502–13T is revised to read as follows:

§ 1.1502–13T Intercompany transactions (temporary).

(a) through (f)(5)(ii)(A) [Reserved]. For further guidance *see* § 1.1502–13(a) through (f)(5)(ii)(A).

(B) *Section 332*—(*1*) *In general.* If section 332 would otherwise apply to T's (old T's) liquidation into B, and B transfers substantially all of old T's assets to a new member (new T), and if a direct transfer of substantially all of old T's assets to new T would qualify as a reorganization described in section 368(a), then, for all Federal income tax purposes, T's liquidation into B and B's transfer of substantially all of old T's assets to new T will be disregarded and instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock and the assumption of T's liabilities in a reorganization described in section 368(a). (Under § 1.1502–13(j)(1), B's stock in new T would be a successor asset to B's stock in old T, and S's gain would be taken into account based on the new T stock.)

(*2*) *Time limitation and adjustments.* The transfer of old T's assets to new T qualifies under paragraph (f)(5)(ii)(B)(*1*) of this section only if B has entered into a written plan, on or before the due date of the group's consolidated income tax return (including extensions), to transfer the T assets to new T, and the statement described in paragraph (f)(5)(ii)(E) of this section is included on or with a timely filed consolidated tax return for the tax year that includes the date of the liquidation (including extensions). However, *see* paragraph (f)(5)(ii)(F) of this section for certain situations in which the plan may be entered into after the due date of the return and the statement described in paragraph (f)(5)(ii)(E) of this section may be included on either an original tax return or an amended tax return filed after the due date of the return. In either case, the transfer of substantially all of T's assets to new T must be completed within 12 months of the filing of the return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T, or liabilities not assumed by new T. For example, if B retains an asset of old T, the asset is treated under § 1.1502–13(f)(3) as acquired by new T but distributed to B immediately after the reorganization.

(f)(5)(ii)(B)(*3*) through (f)(5)(ii)(E) [Reserved]. For further guidance, *see* § 1.1502–13(f)(5)(ii)(B)(*3*) through (f)(5)(ii)(E).

(F) *Effective/Applicability dates*—(*1*) *General rule.* Paragraphs (f)(5)(ii)(B)(*1*) and (f)(5)(ii)(B)(*2*) of this section apply to transactions in which old T's liquidation into B occurs on or after October 25, 2007.

(*2*) *Prior periods.* For transactions in which old T's liquidation into B occurs before October 25, 2007, *see* § 1.1502–13(f)(5)(ii)(B)(*1*) and (f)(5)(ii)(B)(*2*) in effect prior to October 25, 2007 as contained in 26 CFR part 1, revised April 1, 2009.

(*3*) *Special rule for tax returns filed before November 3, 2009.* In the case of a liquidation on or after October 25, 2007, by a taxpayer whose original tax return for the year of liquidation was filed on or before November 3, 2009, then, notwithstanding paragraph (f)(5)(ii)(B)(*2*) of this section and § 1.1502–13(f)(5)(ii)(E), the election to apply paragraph (f)(5)(ii)(B) of this section may be made by entering into the written plan described in paragraph (f)(5)(ii)(B) of this section on or before November 3, 2009, including the statement described in § 1.1502–13(f)(5)(ii)(E) on or with an original tax return or an amended tax return for the tax year that includes the liquidation filed on or before November 3, 2009, and transferring substantially all of T's assets to new T within 12 months of the filing of such original or amended return.

(G) *Expiration date.* These temporary regulations will expire on September 3, 2012.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: February 24, 2011.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–4846 Filed 3–3–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0066]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Witt Penn Bridge at mile 3.1, across the Hackensack River, at Jersey City, New Jersey. The deviation is necessary to perform bridge maintenance. This deviation allows the bridge owner to require a two-hour advance notice for bridge openings.

DATES: This deviation is effective from April 4, 2011 through May 8, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0066 and are available online at

http://www.regulations.gov, inserting USCG–2011–0066 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil* telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Witt Penn Bridge, across the Hackensack River at mile 3.1 has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723.

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

Most vessels that presently use this waterway can pass under the bridge without a bridge opening.

The owner of the bridge, New Jersey Department of Transportation, requested a temporary deviation to facilitate the replacement of the AC drive motors and subsequent testing.

Under this temporary deviation the Witt Penn Bridge, mile 3.1, across the Hackensack River may require a two-hour advance notice for bridge openings from April 4, 2011 through May 8, 2011. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 11, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–4852 Filed 3–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0081]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Annual Cesar Chavez March. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 10 a.m. to 11:30 a.m. on March 26, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0081 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0081 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 10 a.m. to 11:30 a.m. on March 26, 2011 to allow the community to participate in the Annual Cesar Chavez March. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened with 15 minutes advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 17, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011–4853 Filed 3–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0116]

Drawbridge Operation Regulation; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Cape Fear River Memorial Bridge, across the Cape Fear River, mile 26.8, at Wilmington, NC. The deviation restricts the operation of the draw span to facilitate the cleaning and painting of the structure.

DATES: This deviation is effective from 7 a.m. on March 15, 2011 through 11:59 p.m. on July 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–0116 and are available online by going to *http://www.regulations.gov,*

inserting USCG–2011–0116 in the "Keywords" box, and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District; telephone 757–398–6422, e-mail *Bill.H.Brazier@uscg.mil.* If you have questions on viewing the docket, call Renne V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation, who owns and operates this vertical-lift bridge, has requested a temporary deviation from the current operating schedule to facilitate painting of the structure.

Under the regular operating schedule the bridge opens on signal as required by 33 CFR 117.5, except that under 33 CFR 117.823, the draw need not open for the passage of vessels from 8 a.m. to 10 a.m. on the second Saturday of July and from 7 a.m. to 11 a.m. on the second Sunday of November every year.

The Cape Fear River Memorial Bridge across the Cape Fear River, mile 26.8, at Wilmington, NC has vertical clearances in the open and closed positions of 135 feet and 65 feet above mean high water, respectively.

Under this temporary deviation, the drawbridge will operate as follows: From 7 a.m. on March 15, 2011 through 11:59 p.m. on July 30, 2011 vessel openings will be provided if at least three hours advance notice is given to the bridge tender at (910) 251–5773 or via marine radio on channel 18 VHF. In addition, to accommodate scaffolding, the available vertical clearances of portions of the drawbridge (up to half of the drawbridge at one time) will be reduced by approximately four feet to 131 feet and 61 feet above mean high water, respectively. There are no alternate routes for vessels transiting this section of the Cape Fear River.

Typical vessel traffic on the Cape Fear River includes a variety of vessels from freighters, tug and barge traffic, and recreational vessels. Vessels that can pass under the bridge without a bridge opening may continue to do so at anytime.

The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. The Coast Guard will use Local and Broadcast Notice to Mariners to inform all users of the waterway of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the draw must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 23, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–4854 Filed 3–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0127]

RIN 1625–AA00

Safety Zone, Dredging Operations; Delaware River, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Delaware River while the Dredge Pullen conducts dredging operations at the Sunoco Marcus Hook docks in the vicinity of the Marcus Hook Range near Marcus Hook, PA. This action is necessary to maintain the 42 ft. berth draft in this portion of the Delaware River. The dredging action will facilitate commerce and safe navigation within the Port of Philadelphia, PA.

DATES: This rule is effective from 8 a.m. on March 3, 2011 through 10 p.m. on March 14, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0127 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0127 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Corrina Ott Coast Guard; telephone 215–271–4902, e-mail *Corrina.Ott@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying the effective date is contrary to the public interest because the transport of fuel oils is currently hindered by the reduction in vessel draft for that area. In addition, the dredging operations are necessary for the facilitation of safe navigation within the Delaware River.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

The dredging described above is necessary for the continuation of safe navigation of deep draft vessels on this part of the Delaware River. This safety zone is necessary to protect mariners and members of the public from the hazards associated with dredging.

Background

On March 3, the Dredge Pullen will begin dredging in the vicinity of Sunoco Marcus Hook for maintenance of the facility berth. Current berth draft does not allow for deep draft vessels to safely deliver and transport cargo through the regulated portion of the Delaware River. Dredging will maintain and ensure a depth of 42 ft. through this portion of the Delaware River. This safety zone will allow dredging operations to ensure the 42 ft. draft of this portion of the Delaware River. Such operations will facilitate the movement of commerce by allowing the dredging to maintain the berth's 42 foot depth, allowing for deep

draft vessels to safely deliver and transport cargo through the Port of Philadelphia.

Discussion of Rule

The Coast Guard Captain of the Port Delaware Bay is establishing a temporary safety zone from 8 a.m. on March 3, 2011 to 10 p.m. on March 14, 2011. The boundary line for the temporary safety zone starts at position 39 48′44.51″ N, 75 24′38.76″ W then East to position 39 48′29.33″ N, 75 24′27.88″ W, then South to 39 48′16.74″ N, 75 24′54.20″ W, then West to the shoreline in the vicinity of Sunoco Marcus Hook, in Marcus Hook, PA. Vessels will be allowed to transit adjacent to the safety zone through Anchorage #7; additionally, vessels wishing to anchor in Anchorage #7 will be allowed to do so in the upper end on a first come, first served basis for an anchorage period not to exceed 24 hours. Vessels should contact Sector Delaware Bay at 215–271–4807 to make advanced arrangements for such anchorage at Anchorage #7.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation will prevent traffic from transiting a portion of the Delaware River during the dredging operations, the effect of this regulation will not be significant due to the limited effective period of approximately 12 days. Advanced maritime advisories will be issued by the Coast Guard for users of the Delaware River. The regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. And, vessel traffic will be able to transit safety through the Delaware River, through the lower end of Anchorage #7, adjacent to the regulated area.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Delaware River from March 3, 2011 to March 14, 2011. Although this regulation prevents traffic from transiting a portion of the Delaware River, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be diverted through the lower end of Anchorage #7 to allow vessel traffic to transit safely around the affected area of the Delaware River thereby ensuring continued traffic on the Delaware River; additionally, vessels traffic will be allowed to anchor at the upper end of Anchorage #7. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM Channel 16 (156.8 MHz) and at 215–271–4807. Before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves implementation of regulations within 33 CFR part 165, applicable to safety zones on the navigable waterways. This zone will allow for maintenance dredging and debris disposal where no new depths are required, applicable permits have been secured, and disposal will be at an existing approved disposal site. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–0127, to read as follows

§ 165.T05–0127 Safety Zone; Delaware River, Marcus Hook, PA

(a) *Location.* The boundary line for the temporary safety zone starts at position 39 48′44.51″ N, 75 24′38.76″ W then East to position 39 48′29.33″ N, 75 24′27.88″ W, then South to 39 48′16.74″ N, 75 24′54.20″ W, then West to the shoreline in the vicinity of Sunoco Marcus Hook, in Marcus Hook, PA. All coordinates reference Datum, NAD 1983.

(b) *Effective period.* This rule is effective from 8 a.m. on March 3, 2011 through 10 p.m. on March 14, 2011.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person may enter a safety zone unless authorized by the COTP or the District Commander,

(2) No person may bring or cause to be brought into a safety zone any vehicle, vessel, or object unless authorized by the COTP or District Commander,

(3) No person may remain in a safety zone or allow any vehicle, vessel, or object to remain in a safety zone unless authorized by the COTP or the District Commander,

(4) Each person in a safety zone who has notice of a lawful order or direction shall obey the order or direction of the COTP or District Commander issued to carry out the purposes of this subpart.

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

Dated: February 28, 2011.

Meredith L. Austin,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2011–4973 Filed 3–3–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2009–0517; FRL–9275–7]

Updating Cross-References for the Oklahoma State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments.

SUMMARY: In this rule, EPA is making a minor correction to the final rule titled, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" to correct the regulatory text related to Oklahoma's State Implementation Plan (SIP). Region 6 approved revisions to the Oklahoma SIP that recodified the regulations. This approved recodification took effect on December 27, 2010. This rule updates cross-references in the regulatory text in light of this recodification.

DATES: *Effective Date:* These correcting amendments are effective on March 4, 2011.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0517. 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.,* confidential business information 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 EPA Docket Center EPA/DC, 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Michael S. Brooks, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504–05, Research Triangle Park, NC 27711; telephone number (919) 541–3539, *e-mail address: brooks.michaels@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 2010, EPA published a final rule titled, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" (SIP Narrowing Rule) (75 FR 82536). This rule was signed on December 23, 2010. This final rule narrowed EPA's previous approval of SIP Prevention of Significant Deterioration (PSD) programs in 24 states that apply to GHG-emitting sources. Specifically, in that rule EPA withdrew its previous approval of those programs to the extent they applied PSD to GHG-emitting sources below the thresholds in the final Tailoring Rule, which EPA promulgated by **Federal Register** notice dated June 3, 2010.

For a detailed description of the rule titled, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans," please see the rulemaking action which is available in the **Federal Register** at (75 FR 82536).

II. Why are the corrections needed?

In the SIP Narrowing Rule, EPA amended its approval of Oklahoma's SIP in 40 CFR 52.1929 by adding provision 40 CFR 52.1929(c), in which it cross-referenced specific provisions of Oklahoma's approved state PSD program.

Separately, EPA Region 6 approved revisions to the Oklahoma SIP that recodified the regulations, including the provisions that were cross-referenced by the aforementioned SIP Narrowing Rule. This approved recodification took effect on December 27, 2010, in between the dates the SIP Narrowing Rule was signed and published. As a result, the regulatory text within the SIP Narrowing Rule related to the Oklahoma SIP is no longer accurate as the SIP provisions listed in the SIP Narrowing Rule no longer cross-reference to the portions of the state PSD program. Therefore, EPA is correcting this error.

III. What is the rulemaking procedure?

The EPA is issuing this final rule without prior proposal or the opportunity for public comment because EPA finds that it is unnecessary and not in the public interest to provide such notice and opportunity for comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the Agency may issue a rule without providing notice and an opportunity to comment. Section 307(d)(1) of the Clean Air Act (CAA), among other things, further provides that CAA subsection 307(d) does not apply when EPA has made a good cause finding pursuant to subparagraph (B) of APA subsection 553(b). (*See* 42 U.S.C. 7607(d)(1).) In this rule, EPA finds that it is unnecessary and would serve no useful purpose for EPA to provide an opportunity for public comment because the changes merely correct minor, inadvertent, and nonsubstantive errors. As explained above, the correction to 40 CFR 52.1929(c)(4)(iii) corrects minor, inadvertent errors in the regulatory text. For these reasons, EPA finds pursuant to APA section 553 that good cause exists to promulgate this final rule without publishing notice of a proposed rule or providing an opportunity for public comment.

Section 553(d)(3) also allows an agency, upon a finding of good cause, to make a rule effective immediately. Because this action corrects minor, inadvertent errors and helps to clarify requirements in the underlying rules, EPA finds good cause exists to make these corrections effective immediately.

IV. Statutory and Executive Order Reviews

This action only corrects minor, inadvertent and nonsubstantive errors. For that reason, this rule: Is not subject to review by the Office of Management and Budget under Executive Order 12866 Regulatory Planning and Review (58 FR 51735, October 4, 1993); is not a "major rule" as defined by 5 U.S.C. 804(2); and does 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 found that for this action it is unnecessary to issue a proposed rule and invite public comment, this action is also 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.

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

The corrections are 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.

The corrections do not involve changes to technical standards related to test methods or monitoring methods; 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.

The corrections also do 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, 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 United States. 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 on March 4, 2011.

The EPA's compliance with the above statutes and Executive Orders for the

underlying rules is discussed in section VII of the rule titled, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" at 75 FR 82549.

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Incorporation by reference, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

Dated: February 24, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 52—[AMENDED]

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

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

Subpart LL—Oklahoma

■ 2. Section 52.1929 is amended by revising paragraph (c)(4)(iii) to read as follows:

§ 52.1929 Significant deterioration of air quality.

* * * * *

(c) * * *

(4) * * *

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the EPA-approved procedures in Oklahoma Air Pollution Control Regulation Title 252, Chapter 100, Subchapter 8, Part 7) and a significant net emissions increase (as defined in the EPA-approved Oklahoma Air Pollution Control Regulation 252:100–8–31, definitions for "net emissions increase" and "significant" occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 252:100–8–31 of the EPA-approved definition for "significant" of Oklahoma's Air Pollution Control Regulations.

[FR Doc. 2011–4907 Filed 3–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0021; FRL–8865–3]

Peroxyacetic Acid; Amendment to an Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing tolerance exemption for peroxyacetic acid by establishing an exemption from the requirement of a tolerance for residues of the biochemical pesticide peroxyacetic acid (PAA) and its metabolites and degradates, including hydrogen peroxide (HP) and acetic acid (AA), in or on all food commodities, when PAA is used as a biochemical pesticide in accordance with good agricultural practices. BioSafe Systems, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting that EPA amend the existing PAA tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of PAA under the FFDCA.

DATES: This regulation is effective March 4, 2011. Objections and requests for hearings must be received on or before May 3, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0021. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Cheryl Greene, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0352; e-mail address: *greene.cheryl@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0021 in the subject line on

the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 3, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2008–0021, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of February 13, 2008 (73 FR 8311) (FRL–8349–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7262) by BioSafe Systems, LLC, 22 Meadow Street, East Hartford, CT 06108. The petition proposed to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide, peroxyacetic acid in or on all agricultural commodities when used as a biochemical pesticide. This notice referenced a summary of the petition prepared by the petitioner, BioSafe Systems, LLC, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *." Additionally, section 408(b)(2)(D) of FFDCA requires that EPA consider "available information concerning the cumulative effects of [a particular pesticide's] residues and other substances that have a common mechanism of toxicity."

Section 408(a)(3) of FFDCA states that residues of metabolites or degradates of pesticide chemicals "shall not be considered to be unsafe * * * despite the lack of a tolerance or exemption from the need for a tolerance for such residue in or on such food" if three conditions are met. First, the Agency must not have determined that the degradation product "is likely to pose any potential health risk from dietary exposure that is of a different type than, or of a greater significance than, any risk posed by dietary exposure to the precursor substance". Second, for purposes of this action, an exemption exists for residues of the precursor substance. Third, again for purposes of this action, the exemption for residues of the precursor substance does not expressly exclude residues of the metabolites or degradates.

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview

The purpose of this rulemaking is to amend the existing tolerance exemption for PAA to allow for residues of PAA and its metabolites and degradates, including HP and AA in or on all food commodities, when such residues result from its use as a biochemical pesticide in accordance with good agricultural practices. At high concentrations, PAA is a highly corrosive, colorless, organic compound that is formed, and only exists in equilibrium, with hydrogen peroxide and acetic acid. The current exemptions for residues of PAA allow application of PAA, after dilution to specific concentrations in parts per million (ppm), as an antimicrobial treatment to fruits, vegetables, tree nuts, cereal grains, herbs, spices, and as a sanitizing solution to tableware, utensils, dishes, pipelines, tanks, vats, fillers, evaporators, pasteurizers, aseptic equipment, milking equipment, and food processing equipment in food handling establishments. (40 CFR 180.1196).

B. Toxicity of PAA

1. *Acute toxicity.* Acute toxicity data and information submitted to support the exemption from the requirement of a tolerance for peroxyacetic acid were conducted on the technical blend of peroxyacetic acid, acetic acid and hydrogen peroxide. PAA is always sold in solution with AA and HP to maintain stability of the chemical. Further, all three active ingredients have an identical mode of action as strong oxidizing agents that disrupt cell membranes because of the low ph. This information confirms the toxicity profile of peroxyacetic acid, acetic acid and hydrogen peroxide. The results of the toxicology studies as conducted on the technical blend are reported in the table of Unit III.B.1.

TABLE—TOXICOLOGY STUDIES RESULTS

Study type	Study results
Acute oral toxicity	The acute oral median LD_{50} = 3,622 milligrams/kilograms (mg/kg) for male and female rats given a solution containing 5.6% PAA, 26.9% H_2O_2, and 7.6% HOAc. This technical blend is Toxicity category III for acute oral toxicity. (Master Record Identification Number [MRID No.] 47237802, Ref. 1). (ECETOC, Ref. 2).
Acute dermal toxicity	The acute dermal LD_{50} = 1,040 mg/kg (Tox category II) for female rabbits after a 24-hr semi-occlusive exposure to a solution containing 4.89% PAA, 19.72% H_2O_2, and 10% HOAc. (Ref. 1 and 2).
Acute inhalation toxicity	The acute inhalation median LC_{50} > 5.35 mg/L for male and female rats exposed for 4 hr to aerosol of solution containing 4.5% PAA, 27% H_2O_2, and 16.7% HOAc. (Ref. 1 and 2).
Primary eye irritation	Due to pH of 0.82 for 2.0% solution and pH 0.82 for 5.0% solution, PAA is assumed to be a severe irritant; ≥ 0.2% PAA was severely irritating or corrosive to the eye, 0.15% was mildly irritating to the rabbit eye, and 0.034% caused very slight irritation. (Ref. 1 and 2).
Primary dermal irritation	Due to pH of 0.82 for 2.0% solution and pH 0.82 for 5.0% solution, PAA is assumed to be a severe irritant. (Ref. 1 and 2).

2. *Subchronic toxicity.* Based on its acute toxicity profile, use pattern and biodegradation properties, rapid degradation half lives for degradates, residues of PAA and its degradates, including AA and HP, are not expected to result in significant dietary exposure beyond the levels expected in background dietary exposures. Nonetheless, information from the open scientific literature to address the subchronic oral, dermal and inhalation toxicity guidelines testing, satisfied the data requirements for subchronic toxicity and indicated that PAA and its degradates have no subchronic toxicological effect.

C. Degradates of PAA

PAA degrades rapidly to AA and HP, and HP further degrades to water and oxygen; therefore, the final degradation products of PAA are AA, water, and oxygen. As stated in Unit II., section 408(a)(3) allows degradates of precursor substances to be covered by the exemption for the precursor substance as long as, inter alia, the Administrator has not determined that the degradation product "is likely to pose any potential health risk from dietary exposure that is of a different type than, or of a greater significance than, any risk posed by dietary exposure to the precursor substance". For PAA and its degradates AA and HP, EPA has made no such determination. The following discussion summarizes the Agency's previous assessments of AA and HP.

1. *Acetic acid.* AA is a substance found in most plants and animals, including primates and humans, and is naturally produced during the fermentation process in a wide range of foods. Furthermore, AA has a long history of use as a food additive, is the main acid in vinegar, and is found in wine, beer, and similarly brewed beverages and fermented food items (*e.g.*, sauerkraut). The Food and Drug Administration (FDA) classifies AA as Generally Recognized as Safe (GRAS) as a direct food substance (21 CFR 184.1005) and as a general purpose food additive (21 CFR 582.1005). Furthermore, information from the open literature indicates that AA has little or no toxicity from an acute oral perspective (toxicity category III; median lethal dose (LD_{50}) = 3,310 mg/kg). Data also indicate that AA has no subchronic, developmental, or mutagenic toxicological effects. (Ref. 3).

2. *Hydrogen peroxide.* Previously, EPA assessed HP for potential risks to the U.S. population, including infants and children, and concluded that, since HP itself degrades rapidly into oxygen and water, residues of a solution that contains 1% HP are not expected to remain in or on food. Hydrogen peroxide is listed by the FDA as GRAS. Additionally, hydrogen peroxide is used to treat food at a maximum level of 0.05% in milk used in cheesemaking, 0.04% in whey, 0.15% in starch and corn syrup, and 1.25% in emulsifiers containing fatty acid esters as bleaching agents (21 CFR 184.1366). As a GRAS substance, hydrogen peroxide may be used in washing or to assist in the lye peeling of fruits and vegetables (21 CFR 173.315). The information from open literature demonstrated that solutions containing 6% hydrogen peroxide have an acute oral LD_{50} >/= 5,000 mg/kg in rats (toxicity category III), an acute dermal LD_{50} >/= 10,000 mg/kg in rabbits (toxicity category IV), and an inhalation LC_{50} of 4 milligram/liter (mg/L) (toxicity category IV). The 6% hydrogen peroxide solutions are mild irritants to rabbit skin and cause severe irreversible corneal injury in half of the exposed rabbits (toxicity category I). Toxicology information from open literature demonstrated that solutions which contained 50% hydrogen peroxide have an acute oral LD_{50} < 500 mg/kg in rats (toxicity category II), and an acute dermal LD_{50} < 1,000 mg/kg in rabbits (toxicity category II). No deaths resulted after an 8-hour exposure of rats to saturated vapors of 90% hydrogen peroxide, LC_{50} = 4 mg/L (2,000 ppm). Solutions which contain 50% hydrogen peroxide also are extremely irritating (corrosive) to rabbit eyes (toxicity category I). EPA has concluded that for food use at an application rate of 1%, hydrogen peroxide has no apparent acute toxicity and subchronic toxicity end points exist to suggest a significant toxicity. An RfD (chronic toxicity) for hydrogen peroxide has not been estimated because of its short half-life in the environment and lack of any residues of toxicological concern. (Ref. 4).

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Dietary exposure to residues of PAA and its degradate components, AA and HP, are expected to be virtually nonexistent at the time of consumption. Even in the event of unlikely exposure, the information supporting this tolerance exemption demonstrates that any dietary risks would be negligible.

1. *Food.* When used as a soil treatment, the Agency does not expect there to be any residues of PAA or its degradates because PAA breaks down rapidly on contact with soil, which precludes uptake of PAA by plants. The rate of degradation can be affected by the concentration of PAA in a solution and environmental conditions (*e.g.*, temperature and pH of the environment

in which the PAA is applied), but the Agency expects that PAA, when used as a biochemical pesticide for applications to soil or foliage or greenhouse structures, will likely degrade within 24 hours following application. This is because good agricultural practices generally require a soil pH of 5 to 7, at which level PAA degrades in less than 24 hours. Regardless of the time required for PAA to break down, the use of this biochemical pesticide as a pre-plant soil treatment would occur before any food crops would be present, and degradation would prevent uptake by plants; thus, no residues are expected from use as a soil treatment to sterilize the soil and kill pathogens in soils.

When used to treat plants directly, the Agency anticipates that PAA will be applied to the plant at concentrations that will not cause damage to the plant. At such concentrations, the Agency expects PAA to degrade within 24 hours into AA, oxygen, and water because PAA begins to degrade immediately upon contact with organic matter. Therefore, the Agency has determined that there will be little to no exposure to PAA from direct treatment of plants.

2. *Drinking water exposure.* The Agency expects there to be little to no exposure of humans to PAA and its degradates in drinking water since PAA degrades quickly in water, i.e., within 24 hours, especially water bodies with neutral or alkaline pH levels, into AA, oxygen, and water. In the event that residues of the degradates are present, the levels of the degradates do not present a risk concern based on the foreseeable rates at which PAA is likely to be applied.

B. Other Non-Occupational Exposure

Non-occupational exposure is not expected since PAA rapidly degrades and is non-persistent in the environment.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

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

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* Based on the lack of exposure to much, if any, PAA and its metabolites and degradates, including HP and AA, the Agency has concluded that there is reasonable certainty that no harm will result to the general U.S. population, including infants and children, from aggregate exposure to PAA and its metabolites and degradates, including HP and AA. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

2. *Infants and children.* FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different MOE will be safe for children. MOEs, which are often referred to as uncertainty (safety) factors, are incorporated into EPA risk assessments either directly, or through the use of a MOE analysis or by using uncertainty factors in calculating a dose level that poses no appreciable risk. Because there are no threshold effects of concern to infants, children, and adults from PAA and its metabolites or degradates, including HP and AA, the Agency concludes that the additional MOE is not necessary to protect infants and children and that removing the FQPA safety factor will be safe for infants and children.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

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

The Codex has not established a MRL for peroxyacetic acid.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of peroxyacetic acid and its metabolites and degradates, including AA and HP. Therefore, the existing tolerance exemption for PAA is amended to establish a tolerance exemption for residues of the biochemical pesticide, peroxyacetic acid, in or on all food commodities, when used in accordance with good agricultural practices.

IX. References

1. Mileson, B.E. 2007. Biochemical Pesticide Data Required for Zerotol 2.0. Submitted by BioSafeSystems LLC. MRID 472378002.
2. ECETOC, 2001. Peroxyacetic Acid (CAS No. 79–21–0) and its Equilibrium Solutions. Joint Assessment of Commodity Chemicals, JACC No 40. European Centre for Ecotoxicology and Toxicology of Chemicals. Brussels, pp. 27–32. January 2001.
3. Environmental Protection Agency. [EPA–HQ–OPP–2010–0561; FRL–8833–8]. Acetic Acid: Exemption from the Requirement of a Tolerance. Final Rule; 75 FR 40736, July 14, 2010.
4. Environmental Protection Agency. [OPP–2002–0042; FRL–6835–3]. Hydrogen Peroxide; An amendment to an Exemption from the Requirement of a Tolerance; Technical Correction. Final Rule; Technical Correction; 67 FR 41844, June 20, 2002; Corrected 67 FR 9214, February 28, 2002, FRL–6822–7.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been

exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 2011.

Keith A. Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.1196, add paragraph (c) to read as follows:

§ 180.1196 Peroxyacetic acid; exemption from the requirement of a tolerance.

* * * * *

(c) An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide peroxyacetic acid and its metabolites and degradates, including hydrogen peroxide and acetic acid, in or on all food commodities, when used in accordance with good agricultural practices.

[FR Doc. 2011–4773 Filed 3–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Appendix A, Armed Services Board of Contract Appeals, Part 2—Rules

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201 to 299), revised as of October 1, 2010, on page 516, in Appendix A, above the heading "Preface", the following heading and text is added;

APPENDIX A TO CHAPTER 2—ARMED SERVICES BOARD OF CONTRACT APPEALS

* * * * *

Part 2—Rules

Approved 15 July 1963.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 30 June 1980.

* * * * *

[FR Doc. 2011–5074 Filed 3–3–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110111018–1095–02]

RIN 0648–XA109

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Temporary emergency rule; interim measures.

SUMMARY: NMFS is suspending directed fishing for Pacific sardine off the coasts of Washington, Oregon and California through June 30, 2011. This action is necessary because the proposed directed harvest allocation total for Pacific sardine the first seasonal period (January 1–June 30) of 15,214 metric tons (mt) is projected to be reached by the effective date of this rule. Under this rule, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries; the incidental harvest of Pacific sardine is

limited to 30-percent by weight of all fish caught per trip. Vessels with Pacific sardine catch must be at shore and in the process of offloading at 12:01 a.m. Pacific Standard Time (PST) on the date of this closure. This rule is necessary to help conserve and manage Pacific sardine off the West Coast.

DATES: Effective 12:01 am PST, March 5, 2011, through June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: Based on the best available information recently obtained from the fishery and information on past effort, the proposed 2011 directed fishing harvest allocation for Pacific sardine for the first period (January 1–June 30) of fishing year 2011 has been reached. Accordingly, NMFS is closing directed fishing for Pacific sardine until the beginning of the next fishing period for this species on July 1, 2011. Vessels with Pacific sardine catch must be at shore and in the process of offloading at the time of this closure. From 12:01 a.m. on the date of closure through June 30, 2011, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 30-percent by weight of all fish caught during a trip. This action is necessary to avoid overfishing and ensure orderly management of the 2011 Pacific sardine fishery in anticipation of approval and implementation of the 2011 Pacific sardine annual specifications. NMFS anticipates the second and third allocation periods of the 2011 fishing season being managed under those annual specifications.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Additionally, the Magnuson-Stevens Act provides that, where necessary to prevent overfishing, NMFS may issue an emergency rule to address the overfishing concern (18 U.S.C. 1855(c)). Each year, NMFS publishes annual specifications in the **Federal Register** to establish the harvest guideline (HG) and seasonal allocations for each fishing season (January 1–December 31). Per the framework in the CPS FMP, if, during any of the seasonal allocation periods, the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed. These seasonal allocations were established as mechanisms to prevent overfishing and provide equitable opportunity to the resource.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait portion of the Pacific sardine fishery.

Classification

This interim rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure is necessary for the conservation and management of the Pacific sardine resource while the rulemaking process for the 2011 Pacific sardine annual specifications is finalized. A delay in effectiveness of this action would cause the fishery to exceed a proposed seasonal allocation. The seasonal allocation framework established in the FMP is an important mechanism to prevent overfishing, and is designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. Delaying the effective date of this rule is therefore impracticable, because any delay would decrease the Pacific sardine stock. Delay is also contrary to the public interest, because additional reduction of Pacific sardine beyond the incidental take limit set out in this action would decrease the future stock of the species, as well as harvest limits, thereby reducing future potential catch of the stock along with the profits associated with those harvests.

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

Dated: February 28, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–4922 Filed 3–1–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 43
Friday, March 4, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–10–0094; FV11–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2011–2012 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 694,774 pounds and 34 percent, respectively, and for Class 3 (Native) spearmint oil of 1,012,983 pounds and 44 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: Comments must be received by April 4, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. Each producer is allotted a prorated share of the salable quantity by applying the allotment percentage to that producer's allotment base for each applicable class of spearmint oil. The producer allotment base is each producer's quantified share

of the spearmint oil market based on a statistical representation of past spearmint oil production and the accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 13, 2010, and recommended salable quantities and allotment percentages for both classes of oil for the 2011–2012 marketing year. The Committee, in a vote of six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 694,774 pounds and 34 percent, respectively. The two members opposing the action favored an undetermined greater salable quantity and allotment percentage for Scotch spearmint oil. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 1,012,983 pounds and 44 percent, respectively.

This rule would limit the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which begins on June 1, 2011. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, Oregon, and a portion of Nevada and Utah. Scotch type oil is also produced in seven other States: Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Additionally, Scotch spearmint oil is produced outside of the U.S., with China and India being the largest global competitors of domestic Scotch spearmint oil production.

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from 72 percent in 1980 to 27 percent in 2002. Recently, sales of Far West Scotch spearmint oil have risen to over 48 percent of world sales, and are expected to hold steady, or go even higher, in the coming years.

In spite of the Far West's growing share of the world market for Scotch spearmint oil, the industry has faced some stressful marketing conditions during the most recent marketing years. Spearmint oil producers experienced relatively good economic conditions in the years from 2004 through 2007, which led to overproduction and an environment of excess supply in the market beginning in 2008 and continuing through 2010. The Far West region, which produced 635,508 pounds of Scotch spearmint oil in 2004, produced 1,050,700 pounds just five years later in 2009, a 65 percent increase.

To compound matters, in addition to increasing overproduction concerns, the demand for Far West Scotch spearmint oil began to actually decline over this period. Sales peaked in 2005 at 1,002,779 pounds, declining to 627,868 pounds in 2009. With production rising and sales dropping, excess inventory of uncommitted Scotch spearmint oil began to accumulate. Scotch spearmint oil carry-in (unsold salable quantity from prior years that is available for sale at the beginning of a new marketing year), which serves as a measure of oversupply in the market, grew from 23,141 pounds in 2007 to 431,028 pounds in 2010.

The Committee's response to the deteriorating marketing environment since 2008 has been to recommend the tightening of volume control regulations. The Committee, which recommended a 2008–2009 marketing year Scotch spearmint oil salable quantity of 993,067 pounds, dropped the recommendation to 802,067 pounds for the 2009–2010 marketing year, and to only 566,962 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage was reduced from 50 percent for the 2008–2009 period to 40 percent for 2009–2010, and down to just 28 percent for 2010–2011.

When the Committee met in October 2010 to consider volume regulation for the 2011–2012 marketing year, many of the previously mentioned negative marketing conditions still persisted. Even while showing some signs of incremental improvement, the current inventories, expected production, and projected demand of Scotch spearmint oil were all at levels considered unhealthy for the industry.

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2011, the primary measure of excess supply, will be approximately 197,551 pounds. That quantity, while down from the previous year's high of 431,028 pounds, would still be above what the Committee considers to be optimum.

Overproduction of Scotch spearmint oil, while improving, also continues to be an area of concern for the Committee. Production of Far West Scotch spearmint oil has declined, from a high of 1,050,700 pounds in 2009, to 868,487 pounds in 2010, and the Committee expects it to drop even further during the 2011 season. The recent declining trend in Scotch spearmint oil production is viewed by the Committee as a positive development and is expected to contribute some relief to the industry's oversupply situation.

In addition, spearmint oil handlers indicated that demand for Scotch spearmint oil might be gaining strength. Handlers that had projected that the trade demand for Far West Scotch oil would range from a low of 750,000 pounds to a high of 850,000 pounds for the 2010–2011 marketing year, expect the trade demand to be within a range of 800,000 pounds to 900,000 pounds for the 2011–2012 period.

However, this increase in projected Scotch demand, generally thought of as a positive indicator for the industry, is viewed cautiously by some industry participants. Consumer demand for mint flavored products is reportedly steady, providing optimism for long term increases in the demand for Far West spearmint oil. Some handlers, though, believe that the manufacturers of such products are currently increasing spearmint oil purchases just to rebuild inventories that were depleted during the worst of the recent U.S. economic recession. As such, those handlers feel that at least some of the recent increase in Scotch spearmint oil sales may not represent an actual increase in sustained demand, but a temporary response to fluctuations in the strategic inventories of the manufacturers.

Still, given the moderately improving economic indicators for the Far West Scotch spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

Therefore, at the October 13, 2010, meeting, the Committee recommended the 2011–2012 Scotch spearmint oil salable quantity of 694,774 pounds and allotment percentage of 34 percent. The Committee utilized sales estimates for 2011–2012 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production

and inventory statistics, to arrive at those recommendations. The volume control levels recommended by the Committee represent a 127,812 pound and 6 percentage point increase over the previous year's salable quantity and allotment percentage, reflecting a more positive assessment of the industry's economic conditions.

The Committee estimates that about 800,000 pounds of Scotch spearmint oil may be sold during the 2011–2012 marketing year. When considered in conjunction with the estimated carry-in of 197,551 pounds of Scotch spearmint oil on June 1, 2011, the recommended salable quantity of 694,774 pounds results in a total available supply of approximately 892,325 pounds of Scotch spearmint oil during the 2011–2012 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2012–2013 marketing year, which begins June 1, 2012, would be 92,325 pounds, a decrease of 105,226 pounds from the beginning of the 2011–2012 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2011—197,551 pounds.* This figure is the difference between the revised 2010–2011 marketing year total available supply of 997,551 pounds and the estimated 2010–2011 marketing year trade demand of 800,000 pounds.

(B) *Estimated trade demand for the 2011–2012 marketing year—800,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2010, as well as estimates provided by handlers and other meeting participants at the October 13, 2010, meeting. The average estimated trade demand provided at the six production area meetings is 800,000 pounds, which is 33,333 pounds less than the average of the trade demand estimates submitted by handlers. The average of Far West Scotch spearmint oil sales over the last five years is 789,243 pounds.

(C) *Salable quantity required from the 2011–2012 marketing year production—602,449 pounds.* This figure is the difference between the estimated 2011–2012 marketing year trade demand (800,000 pounds) and the estimated carry-in on June 1, 2011 (197,551 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base for the 2011–2012 marketing year—2,043,453 pounds.* This figure represents a one percent increase over the revised 2010–2011 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—29.5 percent.* This percentage is computed by dividing the minimum required salable quantity by the total estimated allotment base.

(F) *Recommended allotment percentage—34 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (29.5 percent), the average of the computed allotment percentage figures from the six production area meetings (31 percent), and input from producers and handlers at the October 13, 2010, meeting. The actual recommendation of 34 percent is based on the Committee's determination that the computed percentage (29.5 percent) may not adequately supply the potential 2011–2012 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—694,774 pounds.* This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) *Estimated available supply for the 2011–2012 marketing year—892,325 pounds.* This figure is the sum of the 2011–2012 recommended salable quantity (694,774 pounds) and the estimated carry-in on June 1, 2011 (197,551 pounds).

Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is facing market conditions that are very similar to those affecting the Scotch spearmint oil market, although not nearly as severe. Over 90 percent of U.S. production of Native spearmint oil is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. A minor amount of domestic Native spearmint oil is produced outside of the Far West region in the States of Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India produces an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008 that share had shrunk to a low of 48 percent. Since that point, however, the percentage has rebounded and is now estimated to be over 57 percent for 2010.

In spite of the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past several marketing years. Overproduction, coupled with a decrease in demand, created a similar oversupply situation for Native spearmint oil as was previously discussed for Scotch spearmint oil. Production of Native spearmint oil in the Far West region was 701,372 pounds in 2004, but increased to 1,453,896 pounds just five years later in 2009, a 107 percent increase. In addition, over that same timeframe, demand for Native oil was moving in the opposite direction. Sales of Far West Native oil peaked in 2004 at 1,249,507 pounds. From that cyclical high, sales steadily declined over the next five years, dropping to just 976,888 pounds by 2009. As production rose and sales dropped, excess inventory of uncommitted Native spearmint oil began to accumulate. Carry-in of Native oil measured at the beginning of each marketing year, which serves as a measure of oversupply in the market, grew from 83,417 pounds at the beginning of the 2007–2008 marketing year to 343,517 pounds at the beginning of the 2010–2011 marketing year.

The Committee's response to the difficult marketing environment for Native spearmint oil over the 2008 through 2010 period was similar to the response to the situation with Scotch spearmint oil over that time, to recommend the moderate tightening of volume control regulations. The Committee, which recommended a 2008–2009 Native spearmint oil salable quantity of 1,178,946 pounds, maintained a similar recommendation for the 2009–2010 marketing year and then dropped its recommendation to 953,405 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage, which was 53 percent for the 2008–2009 and 2009–2010 periods, was

recommended to be reduced to just 43 percent for 2010–2011.

Although improving, many of the negative marketing conditions present leading up to the the 2010–2011 marketing year were still evident when the Committee met to consider volume regulation for the upcoming 2011–2012 marketing year. The June 1, 2011, carry-in of Native spearmint oil on June 1, 2011, is estimated to be 216,737 pounds, down from the previous year's high of 343,517 pounds, but still at a level above what the Committee believes to be optimum.

Also, production of Native spearmint oil, while showing some signs of improvement, still remains an area of concern for the Committee. Production of Far West Native spearmint oil, which declined from a high of 1,453,896 pounds in 2009 to 1,244,361 pounds in 2010, is still considered by the Committee to be high relative to the current level of demand and the excess inventory of Native spearmint oil. However, the Committee believes that the declining trend in Native spearmint oil production may continue into the 2011 season and that much of the pressure on the industry's current oversupply situation may be relieved moving forward.

In addition to an improved supply situation, demand for Far West Native spearmint oil appears to have halted its downward movement and is expected to improve in the coming year. Spearmint oil handlers, who projected that the 2010–2011 trade demand for Far West Native spearmint oil would range from a low of 1,050,000 pounds to a high of 1,200,000 pounds, have increased their projections modestly for the 2011–2012 period to a range of 1,100,000 pounds to 1,200,000 pounds.

However, similar to Scotch spearmint oil, the small increase in projected Native spearmint oil demand, generally thought of as a positive indicator for the industry, is viewed by some handlers with caution. As mentioned previously, consumer demand for mint flavored products is expected to be steady or increase slightly moving forward, which provides optimism for long term improvement in the demand for Far West spearmint oil. Some handlers, though, have reported that the manufacturers of such products may just be temporarily increasing purchases of spearmint oil to rebuild inventories that were depleted during the worst of the current U.S. economic recession. As such, the handlers believe that at least some of the recent increase in purchases do not represent an actual increase in sustained demand but, rather, a short term response to fluctuations in the strategic inventories of the manufacturers.

Given the moderately improving economic indicators for the Far West Native spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

As such, at the October 13, 2010, meeting, the Committee recommended a 2011–2012 Native spearmint oil salable quantity of 1,012,983 pounds and an allotment percentage of 44 percent. The Committee utilized sales estimates for 2011–2012 Native spearmint oil, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. The recommended volume control levels represent a 32,763 pound and a 1 percentage point increase over the previous year's salable quantity and allotment percentage. Even with these increases in the salable quantity and allotment percentages, the carry-in at the beginning of the 2012–2013 marketing year is projected to drop by 117,018 pounds.

The Committee estimates that approximately 1,130,000 pounds of Native spearmint oil may be sold during the 2011–2012 marketing year. When considered in conjunction with the estimated carry-in of 216,737 pounds of Native spearmint oil on June 1, 2011, the recommended salable quantity of 1,012,983 pounds results in a total available supply of about 1,229,719 pounds of Native spearmint oil during the 2011–2012 marketing year. The Committee estimates that carry-in of Native spearmint oil at the beginning of the 2012–2103 marketing year to be 99,719 pounds, a significant reduction from the previous year's level of 216,737 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Native spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2011—216,737 pounds.* This figure is the difference between the revised 2010–2011 marketing year total available supply of 1,323,737 pounds and the estimated 2010–2011 marketing year trade demand of 1,107,000 pounds.

(B) *Estimated trade demand for the 2011–2012 marketing year—1,130,000 pounds.* This estimate is established by the Committee and is based on input from producers at the seven Native spearmint oil production area meetings held in late September and early October 2010, as well as estimates provided by handlers and other meeting participants at the October 13, 2010, meeting. The average estimated trade demand provided at the seven production area meetings was 1,130,238 pounds, whereas the handler estimate ranged from 1,100,000 pounds to 1,200,000 pounds.

(C) *Salable quantity required from the 2011–2012 marketing year production—913,263 pounds.* This figure is the difference between the estimated 2011–2012 marketing year trade demand (1,130,000 pounds) and the estimated carry-in on June 1, 2011 (216,737 pounds). This is the minimum amount that the Committee believes would be required to meet the anticipated 2011–2012 Native spearmint oil trade demand.

(D) *Total estimated allotment base for the 2011–2012 marketing year—2,302,233 pounds.* This figure represents a one percent increase over the revised 2010–2011 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—39.7 percent.* This percentage is computed by dividing the required salable quantity (913,263 pounds) by the total estimated allotment base (2,302,233 pounds).

(F) *Recommended allotment percentage—44 percent.* This is the Committee's recommendation based on the computed allotment percentage (39.7 percent), the average of the computed allotment percentage figures from the seven production area meetings (39.7 percent), and input from producers and handlers at the October 13, 2010, meeting. The actual recommendation of 44 percent is based on the Committee's determination that the computed percentage (39.7 percent) may not adequately supply the potential 2011–2012 Native spearmint oil market.

(G) *The Committee's recommended salable quantity—1,012,983 pounds.* This figure is the product of the recommended allotment percentage (44 percent) and the total estimated allotment base (2,302,233 pounds).

(H) *Estimated available supply for the 2011–2012 marketing year—1,229,720 pounds.* This figure is the sum of the

2011–2012 recommended salable quantity (1,012,983 pounds) and the estimated carry-in on June 1, 2011 (216,737 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 694,774 pounds and 34 percent, and 1,012,983 pounds and 44 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal would be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which might develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order makes this provision for an intra-seasonal increase to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2011–2012 marketing year may transfer such excess spearmint oil to producers with production less than their annual allotment, or, up until November 1, 2011, place it into the reserve pool to be released in the future in accordance with market needs.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 42 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 51 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2011–2012 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2011–2012 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2011–2012 season in order to meet anticipated market demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil production from 1980 through 2009 was about 0.23. The CV for spearmint oil grower prices was about 0.16 for that period, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 30-year average (1.89 million pounds from 1980 through 2009) and the largest crop was approximately 163 percent of the 30-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks, which are increased in large production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2011–2012 marketing year for both classes of oil at 1,930,000 pounds, and that the expected combined carry-in will be 414,288 pounds. This results in a combined required salable quantity of 1,515,712 pounds. With volume control, sales by producers for the 2011–2012 marketing year would be limited to 1,707,757 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended allotment percentages, upon which 2011–2012 producer allotments are based, are 34 percent for Scotch and 44 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and

sell additional spearmint. The econometric model estimated a $1.89 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2011–2012 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

After computing the initial 29.5 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Considered levels ranged from 30 percent to 40 percent. Given the moderately improving marketing conditions, there was consensus that the allotment percentage for 2011–2012 should be more than the percentage established for the 2010–2011 marketing year (28 percent). After considerable discussion, in a vote of six members in favor and two members opposed, the Committee determined that 694,774 pounds and 34 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2011–2012 marketing year. The two dissenting members felt that the salable quantity and allotment percentage should be set at some unidentified higher level.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 39.7 percent, the Committee voted unanimously to recommend 1,012,983 pounds and 44 percent for the effective salable quantity and allotment percentage, respectively, for the 2011–2012 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2011–2012 could decline substantially below current levels.

According to the Committee, the recommended salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 13, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is deemed appropriate to allow interested persons the opportunity to respond to this proposal, taking into account that the marketing year begins on June 1, 2011. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.230 is added to read as follows: [**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.230 Salable quantities and allotment percentages—2011–2012 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2011, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 694,774 pounds and an allotment percentage of 34 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,012,983 pounds and an allotment percentage of 44 percent.

Dated: February 25, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4810 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0010; Airspace Docket No. 11–AAL–1]

RIN 2120–AA66

Proposed Amendment of Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise all Anchorage, AK, Federal airways that are affected by the relocation of the Anchorage VHF Omnidirectional Range (VOR) navigation aid. This action is necessary for the safety and management of Instrument Flight Rules (IFR) within the National Airspace System.

DATES: Comments must be received on or before April 18, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2011–0010 and Airspace Docket No. 11–AAL–1 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace, Regulation and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0010 and Airspace Docket No. 11–AAL–1) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0010 and Airspace Docket No. 11–AAL–1." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaskan Service Center, Operations Support Group, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Anchorage VOR, located on Fire Island, is one of the navigation aids used to form points along numerous Federal airways in Alaska. Due to construction of wind turbines on Fire Island, AK, the Anchorage VOR is being relocated to Ted Stevens Anchorage International Airport and renamed. In addition, the equipment is being upgraded to a DOPPLER VOR/distance measuring equipment (VOR/DME) facility that would improve coverage and reliability. Due to the relocation, the published radials from the old Anchorage VOR/DME, as used in each route description, will change by several degrees.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend Federal airways that currently use the Anchorage (ANC) VOR located on Fire Island, AK. The ANC VOR is being upgraded to a Doppler VOR and redesignated as the Anchorage (TED) VOR. The Doppler VOR will be located on the Ted Stevens Anchorage International Airport property. This action would affect 15 Low Altitude Federal airways (Victor Airways and T–Routes), and 14 High Altitude Federal airways (Jet Routes and Q–Routes). In addition to these airways using the TED VOR as the new reference point, the descriptions would be adjusted, where necessary, to show new radials to describe airway intersections.

VOR Federal airways, United States Area Navigation Routes (low), Jet Routes, Alaska Area Navigation Routes, and United States Area Navigation Routes (high), are published in paragraphs 6010, 6011, 2004, 2005, and 2006, respectively, of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Federal Airways listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed 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 Federal airways in Alaska.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 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 FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 27, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6010 VOR Federal airways.

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V–319 [Amended]

From Yakutat, AK, via Johnstone Point, AK, INT Johnstone Point 291°(T)/264°(M) and Anchorage, AK, 125°(T)/106°(M) radials; Anchorage, AK; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; to Nanwak, AK, NDB.

V–320 [Amended]

From Anchorage, AK, INT Anchorage 133°(T)/114°(M) and Johnstone Point, AK, 271°(T)/244°(M) radials; to Johnstone Point.

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V–388 [Amended]

From Anchorage, AK, to INT Anchorage 208°(T)/189°(M) and Kenai, AK, 067° (T)/048°(M) Kenai, AK.

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V–427 [Amended]

From King Salmon, AK, to INT King Salmon 042°(T)/026°(M) and Anchorage, AK, 247°(T)/228°(M) radials.

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V–436 [Amended]

From Anchorage, AK, via INT Anchorage 335°(T)/316°(M) and Talkeetna, AK, 195°(T)/176°(M) radials; Talkeetna; Nenana, AK; Chandalar Lake, AK, NDB; to Deadhorse, AK.

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V–438 [Amended]

From Kodiak, AK, via Homer, AK; Anchorage, AK; Big Lake, AK; Fairbanks, AK; Fort Yukon, AK; Deadhorse, AK; to Barrow, AK.

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V–440 [Amended]

From Nome, AK, via Unalakleet, AK; to McGrath, AK; Anchorage, AK; Middleton Island, AK; Yakutat, AK; Biorka Island, AK; to Sandspit, BC. To Victoria, BC, Canada. The airspace within Canada is excluded.

V–441 [Amended]

From Middleton Island, AK, via the INT of Middleton Island, AK 298°(T)/277°(M) and Anchorage 171°(T)/152°(M) radials to Anchorage, AK.

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V–462 [Amended]

From Cape Newenham, AK, NDB via Dillingham, AK; to INT Dillingham 059° (T)/044°(M) and Anchorage, AK 247°(T)/228°(M) radials to Anchorage, AK.

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V–510 [Amended]

From Emmonak, AK via Anvik, AK, NDB; McGrath, AK, INT McGrath 121°(T)/102°(M) and Big Lake, AK 294°(T)/269°(M) radials; Big Lake.

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Paragraph 6011 United States Area Navigation Routes (T–Routes).

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T–223 EHM to TED [Amended]

EHM NDB/DME
(Lat. 58°39′24″ N., long. 162°04′17″ W.)
DLG VOR/DME
(Lat. 58°59′39″ N., long. 158°33′08″ W.)
NONDA Fix
(Lat. 60°19′16″ N., long. 153°47′58″ W.)
TED VOR/DME
(Lat. 61°10′04″ N., long. 149°57′37″ W.)

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T–227 SYA to SCC [Amended]

SYA VORTAC
(Lat. 52°43′06″ N., long. 174°03′44″ E.)
JANNT WP
(Lat. 52°04′18″ N., long. 178°15′37″ W.)
BAERE WP
(Lat. 52°12′12″ N., long. 176°08′09″ W.)
ALEUT Fix
(Lat. 54°14′17″ N., long. 166°32′52″ W.)
MORDI Fix
(Lat. 54°52′50″ N., long. 165°03′15″ W.)
GENFU Fix
(Lat. 55°23′18″ N., long. 163°06′21″ W.)
BINAL Fix
(Lat. 55°46′00″ N., long. 161°59′56″ W.)
PDN NDB/DME
(Lat. 56°57′15″ N., long. 158°38′51″ W.)
BATTY Fix
(Lat. 59°03′57″ N., long. 155°04′42″ W.)
AMOTT Fix
(Lat. 60°52′27″ N., long. 151°22′24″ W.)
BGQ VORTAC
(Lat. 61°34′10″ N., long. 149°58′02″ W.)
FAI VORTAC
(Lat. 64°48′00″ N., long. 148°00′43″ W.)
SCC VOR/DME
(Lat. 70°11′57″ N., long. 148°24′58″ W.)

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T–244 OME to TED [Amended]

OME VOR/DME
(Lat. 64°29′06″ N., long. 165°15′11″ W.)
TED VOR/DME
(Lat. 61°10′04″ N., long. 149°57′37″ W.)

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T–246 BRW to TED [Amended]

BRW VOR/DME
(Lat. 71°16′24″ N., long. 156°47′17″ W.)
GAL VOR/DME
(Lat. 64°44′17″ N., long. 156°46′38″ W.)
MCG VORTAC
(Lat. 62°57′04″ N., long. 155°36′41″ W.)
TED VOR/DME
(Lat. 61°10′04″ N., long. 149°57′37″ W.)

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T–269 ANN to BET [Amended]

ANN VOR/DME
(Lat. 55°03′37″ N., long. 131°34′42″ W.)
BKA VORTAC
(Lat. 56°51′34″ N., long. 135°33′05″ W.)
YAK VOR/DME
(Lat. 59°30′39″ N., long. 139°38′53″ W.)
JOH VOR/DME
(Lat. 60°28′51″ N., long. 146°35′58″ W.)
TED VOR/DME
(Lat. 61°10′04″ N., long. 149°57′37″ W.)
SQA VOR/DME
(Lat. 61°05′55″ N., long. 155°38′04″ W.)
BET VORTAC
(Lat. 60°47′05″ N., long. 161°49′28″ W.)

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Paragraph 2004 Jet routes.

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J–115 [Amended]

From Shemya, AK, NDB; Mount Moffett, AK, NDB; Dutch Harbor, AK, NDB; Cold Bay, AK; King Salmon, AK; INT King Salmon

053°(T)/037°(M) and Kenai, AK, 239°(T)/220°(M) radials; Kenai; Anchorage, AK; Big Lake, AK; Fairbanks, AK; Chandalar, AK, NDB; to Deadhorse, AK.

* * * * *

J–124 [Amended]

From Big Lake, AK, via Gulkana, AK; to Northway, AK.

J–125 [Amended]

From Kodiak, AK, via Anchorage, AK; INT Anchorage 335°(T)/316°(M) and Talkeetna, AK, 195°(T)/176°(M) radials; Talkeetna; to Nenana, AK.

* * * * *

J–127 [Amended]

From King Salmon, AK; to INT King Salmon 042°(T)/026°(M) and Anchorage, AK, 247°(T)/228°(M) radials.

* * * * *

J–133 [Amended]

From Galena, AK, via Anchorage, AK; Johnstone Point, AK; Orca Bay, AK NDB; via INT Orca Bay NDB 114°(T)/091°(M) and Sitka, AK NDB 308°(T)/285°(M) bearings, to Sitka, AK NDB.

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J–511 [Amended]

From Dillingham, AK; via INT Dillingham 059°(T)/044°(M) and Anchorage, AK 247°(T)/228(M) radials, to Anchorage, AK; Gulkana, AK; to Burwash Landing, YT, Canada, NDB, excluding the portion which lies over Canadian territory.

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Paragraph 2005 Alaska Area Navigation Routes.

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J804R ANCHORAGE, AK, TO FRIED [AMENDED]

Waypoint name	Location	Reference facility
Anchorage, AK	61°10′04″ N. 149°57′37″ W.	Anchorage, AK.
NOWEL	60°29′02″ N. 148°28′31″ W.	Middleton Island, AK.
Middleton Island, AK	59°25′19″ N. 146°21′00″ W.	Middleton Island, AK.
SNOUT	57°53′26″ N. 141°45′19″ W.	Yakutat, AK.
EEDEN	55°53′59″ N. 137°00′06″ W.	Biorka Island, AK.
FRIED	54°13′19″ N. 133°37′57″ W.	Annette Island, AK.

* * * * *

J–889R NOWEL TO LAIRE [AMENDED]

Waypoint name	Location	Reference facility
NOWEL	60°29′02″ N., 148°28′31″ W.	Anchorage, AK.
ARISE	60°00′00″ N., 146°09′13″ W.	Middleton Island, AK.
KONKS	59°33′02″ N., 144°00′07″ W.	Middleton Island, AK.
LAIRE	58°48′15″ N., 140°31′43″ W.	Yakutat, AK.

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Paragraph 2006 Alaska area navigation routes (Q-routes).

* * * * *

Q–8 GAL to TED [Amended]

GAL VORTAC
(Lat. 64°44′17″ N., long. 156°46′38″ W.)
TED VOR/DME
(Lat. 61°10′04″ N., long. 149°57′37″ W.)

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Q–43 TED to FAI [Amended]

TED VOR/DME
(Lat. 61°10′04″ N., long. 149°57′37″ W.)
BGQ VORTAC
(Lat. 61°34′10″ N., long. 149°58′02″ W.)
FAI VORTAC
(Lat. 64°48′00″ N., long. 148°00′43″ W.)

Q–44 OME to TED [Amended]

OME VOR/DME
(Lat. 64°29′06″ N., long. 165°15′11″ W.)
TED VOR/DME
(Lat. 61°10′04″ N., long. 149°57′37″ W.)

Q–45 DLG to AMOTT [Amended]

DLG VOR/DME
(Lat. 58°59′39″ N., long. 158°33′08″ W.)
AMOTT Fix
(Lat. 60°52′27″ N., long. 151°22′24″ W.)

* * * * *

Q–47 AKN to AMOTT [Amended]

AKN VORTAC
(Lat. 58°43′29″ N., long. 156°45′08″ W.)
AMOTT Fix
(Lat. 60°52′27″ N., long. 151°22′24″ W.)

* * * * *

Q–49 ODK to AMOTT [Amended]

ODK VOR/DME
(Lat. 57°46′30″ N., long. 152°20′23″ W.)
AMOTT Fix
(Lat. 60°52′27″ N., long. 151°22′24″ W.)

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

Edith V. Parish,

Manager, Airspace, Regulation and ATC Procedure Group.

[FR Doc. 2011–4937 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[Docket EPA–HQ–OW–2011–0119; FRL–9275–4]

Stakeholder Input: Listening Session to Provide Information and Solicit Suggestions for Regulations Forthcoming Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of listening sessions.

SUMMARY: The EPA is today announcing plans to hold "listening sessions" on March 18 and April 29, 2011, to provide information about the Clean Boating Act (CBA), and to gather recommendations from the public for forthcoming regulation of recreational vessels under the Clean Water Act (CWA) Section 312(o). The listening sessions will be held in Annapolis, MD. EPA may hold additional listening sessions in other locations if there is sufficient interest. The CBA, which was passed by

Congress and signed into law in 2008, directs EPA to promulgate regulations to establish management practices and associated standards of performance for discharges incidental to the normal operation of recreational vessels (*e.g.,* bilgewater, ballast water, and graywater). Because these regulations will affect the owners and operators of approximately 17 million recreational vessels, EPA seeks to inform the general public and regulated community of its plans for development of the regulations, and to hear the views of the general public, the recreational boating community, State agencies, and other interested stakeholders.

DATES: The listening sessions will be held at 210 Holiday Court, Annapolis, Maryland 21401, on March 18 and April 29, 2011, at 7 p.m. EST. Any additional listening sessions that are scheduled will be published in a forthcoming **Federal Register** document. If you would prefer to provide written comments, EPA is asking for comments or relevant information from the interested public to be submitted to the docket on or before June 2, 2011.

ADDRESSES: Submit your statements or input, identified by Docket ID No. EPA–HQ–OW–2011–0119 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov*. Attention Docket ID No. EPA–HQ–OW–2011–0119.
- *Mail:* Water Docket, Environmental Protection Agency, Mail Code: 2822–1T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2011–0119.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West Building Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460, ID No. EPA–HQ–OW–2011–0119. Such deliveries are only accepted during the Docket's normal hours of operation (*see* below), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2011–0119. 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, as well as 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 Water Docket, EPA/DC, 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 Water Docket is (202) 566–2426.

Public Listening Session: EPA intends to hold public listening sessions to provide information to and gather information from the public to assist EPA in the development of regulations for recreational vessels. Written and oral statements will be accepted at the public listening sessions. Input generated from the public listening sessions will be compiled and archived in Docket ID No. EPA–HQ–OW–2011–0119, found at *http://www.regulations.gov.* The public listening session will include an EPA discussion of the background of the CBA, a discussion of the intent of the proposed regulation, and EPA's general approach to the regulatory process.

FOR FURTHER INFORMATION CONTACT: For further information about the CBA or on the listening sessions, contact Brian Rappoli at 202–566–1548, or e-mail *cleanboatingact-hq@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Today's document does not contain or establish any regulatory requirements. Rather, it announces public listening sessions and seeks public input for use in developing proposed regulations under the CWA Section 312(o).

Today's document will be of interest to the general public, State regulatory agencies, other Federal agencies, environmental groups, and owners or operators of recreational vessels.

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

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

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

- Identify the document by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible and provide reasons to support your views.

Make sure to submit your comments by the comment period deadline identified. You may submit your comments electronically, by mail, through hand delivery/courier, or in person by

attending the public listening sessions being held on March 18 and April 22, 2011.

II. Background

The potential environmental impacts from discharges incidental to the normal operation of recreational vessels are broad. Recreational boating activities can introduce non-indigenous invasive species to new aquatic environments through the discharge of encrusting organisms from boat hulls, boat trailers, fishing gear, and through water retained by live wells and fishing buckets, recreational gear, ballast water, and bilge water. Boating activities can also introduce toxic chemicals and other pollutants. For example, graywater discharges from the vessel galley, sinks, or showers can contribute to eutrophication, enhanced turbidity, and introduce pathogenic organisms to the surrounding water. Coatings used to deter organism growth on vessel hulls can release heavy metals and/or other biocides, which can lead to acute or chronic toxicity in non-targeted organisms. Bilgewater can contain oils, dissolved heavy metals, and other chemical constituents that can result in toxic effects on aquatic organisms, contribute to eutrophication, and have negative aesthetic impacts.

The CBA creates a new section 402(r) of the CWA to exclude recreational vessels from National Pollutant Discharge Elimination System permitting requirements. In addition, it adds a new CWA section 312(o) directing EPA to develop regulations that identify the discharges incidental to the normal operation of recreational vessels (other than a discharge of sewage), for which it is reasonable and practicable to develop management practices to mitigate adverse impacts on waters of the United States. Those regulations need to include management practices, as well as performance standards for each such practice. Following promulgation of the EPA performance standards, new CWA section 312(o) directs the United States Coast Guard (USCG) to promulgate regulations governing the design, construction, installation, and use of the management practices. Following promulgation of the USCG regulations, new CWA section 312(o)(6) prohibits the operation of a recreational vessel or any discharge incidental to their normal operation in waters of the United States and waters of the contiguous zone (i.e., 12 miles into the ocean), unless the vessel owner or operator is using an applicable management practice meeting the EPA-developed performance standards.

To be successful, the management practices and performance standards to be developed under the Act will need to be technically effective in reducing or controlling discharges, but also will need to be readily implemented by the recreational boat owner.

To help the public prepare for the listening session, the following background information is provided. Please note that the information presented in this section is in summary form; for more detail, please refer to the information available at *http://water.epa.gov/lawsregs/lawsguidance/cwa/vessel/CBA/about.cfm.*

A. Why is EPA developing proposed regulations for operational discharges from recreational vessels?

In July of 2008, Congress passed the Clean Boating Act of 2008 (Pub. L. 110–288). The CBA directs EPA to promulgate regulations to establish management practices and associated standards of performance for discharges incidental to the normal operation of recreational vessels.

B. What vessels are subject to the CBA?

The CBA defines recreational vessels as vessels: (1) Manufactured primarily for pleasure, (2) used primarily for pleasure, or (3) vessels leased, rented, or chartered for pleasure (CWA section 502(25)). The definition specifically excludes vessels that are subject to USCG inspection and either engaged in commercial use or carry paying passengers. EPA anticipates that the proposed regulation will apply to recreational vessels including, but not limited to: personal watercraft, canoes, kayaks, recreational fishing boats, sail boats, ski boats, power boats and large yachts.

C. What are "Management Practices" (MPs) and who will they apply to?

EPA anticipates the proposed regulation will consist of a number of MPs that will describe practices to reduce environmental pollution from recreational vessels. Each vessel owner/operator would be responsible for implementing the MPs applicable to the types of discharges their vessel creates. The owner/operator is not responsible for those MPs for discharges that their vessel does not create (for example, a sailboat owner is not responsible for the engine maintenance MPs if the sailboat does not have an engine).

D. If I own a recreational vessel, what will I need to do?

At this time, we are only seeking public input to assist us in developing the regulations. Under the CBA, the regulations are to be developed in three phases: Phase 1, EPA develops MPs for incidental discharges from recreational vessels; Phase 2, EPA develops performance standards for the MPs; and Phase 3, USCG develops regulations requiring use of the MPs. Following promulgation of the USCG Phase 3 regulations, discharges incidental to the normal operation of recreational vessels into waters of the United States or the contiguous zone that are not in accordance with the management practices and performance standards will be prohibited. Violations of the CWA section 312(o) regulations will be subject to fines under the CWA.

E. When will this regulation be enforced and who will be enforcing it?

The regulations will be enforceable upon finalization of the Phase 3 regulations by the USCG. The USCG will be the Federal agency enforcing MPs and performance standards. Relevant State agencies can, at their discretion, also enforce these practices and standards under CWA section 312(j) and 312(k).

III. Request for Public Input and Comment

Today's document is being issued to inform the public that EPA is in the process of developing regulations under the CWA section 312(o) and to solicit input from the public. EPA is accepting information during the listening sessions scheduled for March 18 and April 29, 2011, and/or by submission of written comments or relevant information to gain early public input on development of the MPs. Additionally, EPA will be conducting a series of weekly "webinars" to facilitate public participation. More information about the webinar series can be found at *http://water.epa.gov/lawsregs/lawsguidance/cwa/vessel/CBA/.* EPA is also seeking input from the public on whether to hold additional listening sessions in other locations (*e.g.,* Gulf of Mexico, Great Lakes region, and West Coast).

In addition to requesting recommendations for MPs that should be considered for inclusion in the forthcoming proposed rule, EPA is specifically requesting comment on the following:

(1) Are there any guidances, supporting documentation, or communication strategies that you would recommend EPA develop to help vessel owner/operators better understand and comply with the MPs being developed by EPA? If so, please suggest your approaches.

(2) Are there specific discharges (*e.g.,* ballast water) or broad categories of discharges (*e.g.,* oily wastes) for which EPA should consider developing MPs?

(3) Are there specific effluent limitations or best management practices that EPA should consider incorporating into the forthcoming regulations? If so, please provide the recommendation and any supporting information.

(4) Are there relevant Federal, State, or international permits, rules, or guidances EPA should consider using to inform decisions being made for the CWA section 312(o)? If so, please identify the specific sections of the permits, rules, or guidances you believe EPA should consider.

Dated: February 24, 2011.

Denise Keehner,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2011–4989 Filed 3–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0063; FRL–9275–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Paper, Film, and Foil Surface Coating Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). This SIP revision includes amendments to Chapter 121—General Provisions and Chapter 129—Standards for Sources of Title 25 of the Pennsylvania Code. Pennsylvania's SIP revision meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for paper, film, and foil surface coating processes, and will help Pennsylvania attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 4, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0063 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2011–0063, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0063. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2011, the Pennsylvania Department of Environmental Protection (PADEP) submitted to EPA a SIP revision concerning the adoption of the CTG for paper, film, and foil surface coating processes.

I. Background

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

CTGs are intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOCs from various sources, including paper, film, and foil coatings. In developing these CTGs, EPA, among other things, evaluated the sources of VOC emissions from this industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provided recommendations for RACT for VOCs from paper, film, and foil coatings.

In December 1977, EPA published a CTG for surface coating of paper (EPA–450/2–77–008). This CTG discusses the nature of VOC emissions from this industry, available control technologies for addressing such emissions, the costs of available control options, and other items. EPA promulgated national standards of performance for new stationary sources (NSPS) for the paper, foil, and film industry and EPA also published a national emission standard

for hazardous air pollutants (NESHAP) for this industry.

In 2006 and 2007, after conducting a review of currently existing state and local VOC emission reduction approaches for the paper, foil, and film industry, reviewing the 1977/1978 CTG and the NESHAP for this industry, and taking into account the information that has become available since then, EPA developed a new CTG surface coating for paper, entitled *Control Techniques Guidelines for Paper, Film, and Foil Coatings* (Publication No. EPA 453/R–07–003; September 2007).

The paper, film, and foil product category includes coatings that are applied to paper, film, or foil surfaces in the manufacturing of several major product types for the following industry sectors: Pressure sensitive tape and labels; photographic film; industrial and decorative laminates; abrasive products; and flexible packaging. The category also includes coatings applied during miscellaneous coating operations for several products including: Corrugated and solid fiber boxes; die-cut paper paperboard and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic asceptic packaging; and carbon paper and inked ribbons. VOC emissions from paper, film, or foil surface coating processes result from the evaporation of the components of the coatings and cleaning materials.

II. Summary of SIP Revision

On January 4, 2011, PADEP submitted to EPA a SIP revision concerning the adoption of the EPA paper, film, and foil surface coating processes. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. Pennsylvania has adopted EPA's CTG standards for paper, film, and foil surface coating processes. These regulations are in Chapter 121—General Provisions, and in Chapter 129—Standards for Sources, in Title 25 of the Pennsylvania Code. Specifically, this revision amends the existing regulations at sections 121.1, 129.51 and 129.52 and adds new section 129.52b. Several definitions were amended or added in section 121.1 and section 129.52 was amended to extend coverage to paper, film, and foil surface coating processes. New section 129.52b includes VOC emission limits, work practices, and recordkeeping and reporting requirements, all of which are consistent with EPA's CTG for paper, film, and foil surface coating processes. The requirements in section 129.52b supersede the requirements in 129.52 relating to control of VOC emissions from paper, film, and foil surface coating processes. The emission limits of VOCs for paper, film, and foil surface coatings are shown in Table 1. These emission limits apply if potential VOC emissions from a single line, prior to control, are 25 tons per year (tpy) or more.

TABLE 1—RECOMMENDED EMISSION LIMITS FOR PAPER, FILM, AND FOIL COATINGS

Units	RACT limits	
	Pressure sensitive tape and label surface coating	Paper, film, and foil surface coating (not including pressure sensitive tape and label)
kg VOC/kg solids (lb VOC/lb solids)	0.20	0.40
kg VOC/kg coating (lb VOC/lb coating)	0.067	0.08

Additionally, VOC emission limits for paper coatings only and the associated applicability criteria that were in section 129.52(a)(2) were added to section 129.52(b) in order to carry forward previously regulated paper coating sources and to eliminate the potential for backsliding. These VOC emission limits apply only to paper coatings if actual VOC emissions have exceeded 3 pounds per hour, 15 pounds per day or 2.7 tpy in any year since January 1, 1987. The emission limits are shown in Table 2.

TABLE 2—EMISSION LIMITS OF VOCS FOR PAPER COATING

Units	RACT limit for paper coating
lb VOC/gal coating solids	4.84
kg VOC/l coating solids	0.58

III. Proposed Action

EPA is proposing to approve the Pennsylvania's SIP revision for adoption of the CTG standards for paper, film, and foil surface coating processes. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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 proposed rule concerning Pennsylvania's adoption of a CTG for paper, film, and foil surface coating processes does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 22, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–4909 Filed 3–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, and 252

[DFARS Case 2009–D043]

RIN 0750–AG83

Defense Federal Acquisition Regulation Supplement; Reporting of Government-Furnished Property

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

ACTION: Notice of public meeting on proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and expand reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified, and to clarify policy for contractor access to Government supply sources.

DATES: *Public Meeting:* DoD is hosting a public meeting to discuss the proposed rule on March 18, 2011, from 1 p.m. to 4 p.m. DST. DoD published a notice of the public meeting on March 1, 2011 (76 FR 11190). This notice provides additional information about the process for admittance to the meeting. Attendees should register for the public meeting at least one week in advance to ensure adequate room accommodations and to facilitate admittance into the meeting. Registrants will be given priority if room constraints require limits on attendance. To register, please go to—*http://www.acq.osd.mil/dpap/dars/Government-furnishedproperty.html* and submit the following information:

(1) Company or organization name;

(2) Full names of persons attending;

(3) Identity if desiring to speak; limit to a 10-minute presentation per company or organization;

(4) Last four digits of social security number for each person attending (non-Federal employees only).

Send questions about registration or the submission of comments to the e-mail address identified at *http://www.acq.osd.mil/dpap/dars/Government-furnishedproperty.html.* Please cite "Public Meeting, DFARS Case 2009–D043" in the subject line of the e-mail.

ADDRESSES: *Public Meeting:* The public meeting will be held in the General Services Administration (GSA) multipurpose room, 2nd floor, One Constitution Square (OCS), 1275 First Street, NE., Washington, DC 20417. Interested parties are encouraged to arrive at least 30 minutes early.

Federal employees: Upon arrival at OCS, attendees may enter through the main entrance and show their badge to the security officer behind the front desk prior to gaining admittance.

Non-Federal employees: Upon arrival at OCS, attendees must have a valid picture ID and enter through the visitor entrance. From there, they will be escorted to and from the meeting room by a designated GSA employee. If an attendee's name is not on the list provided to security in advance of the meeting, the attendee will still be allowed into the meeting, but admittance may be delayed.

If you wish to make a presentation, please contact and submit a copy of your presentation by March 11, 2011, to Ms. Clare Zebrowski, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20302–3060; facsimile 703–602–0350. Please cite "Public Meeting, DFARS Case 2009–D043" in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment to be considered in the formation of a final rule, the presentation must be submitted separately as a written comment as instructed below.

Special Accommodations: The public meeting is physically accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: Ms. Clare Zebrowski, Telephone 703–602–0289; facsimile 703–602–0350. Please cite DFARS Case 2009–D043.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule in the **Federal Register** on December 22, 2010 (75 FR 80427). DoD published an extension of the public comment period on February 18, 2011 (75 FR 9527). The public comment period ends on April 8, 2011.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–4877 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

48 CFR Parts 908, 945, and 970

RIN 1991–AB86

Acquisition Regulation: Department of Energy Acquisition Regulation, Government Property

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to conform to the Federal Acquisition Regulation (FAR), remove out-of date government property coverage, and update references. This proposed rule does not alter substantive rights or obligations under current law.

DATES: Written comments on the proposed rulemaking must be received on or before close of business April 4, 2011.

ADDRESSES: This proposed rule is available and you may submit comments, identified by DEAR: parts 908, 945 and 970 and RIN 1991–AB86, by any of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

E-mail to: DEARrulemaking@hq.doe.govmailto:. Include DEAR: parts 908 and 945 and RIN 1991–AB86 in the subject line of the message.

Mail to: U.S. Department of Energy, Office of Resource Management, MA–632, 1000 Independence Avenue, SW.,

Washington, DC 20585. Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT: Helene Abbott at (202) 287–1593 or via e-mail: *helene.abbott@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

DOE is proposing to amend parts 908, Required Sources of Supplies and Services, 945, Government Property, and related 970, Management and Operating Contracts, to remove out-of-date coverage, to update references and to conform to the FAR.

Part 945 is amended to conform to FAR Part 45, Government Property. On May 15, 2007 (72 FR 27364), in the Federal Acquisition Circular (FAC) 2005–17, FAR Part 45 was amended to simplify procedures, clarify language, and eliminate out-of-date requirements related to the management and disposition of Government property in the possession of contractors by establishing a life-cycle approach to property management and sanctioning the use of consensus standards or industry-leading standards and practices for property management. The FAC deleted outdated clauses and combined selected FAR property clauses into a single clause. This proposed rule updates corresponding DEAR sections to conform to the FAR and other federal agencies' procedures. None of these changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

II. Section-by-Section Analysis

DOE proposes to amend the DEAR as follows:

1. Section 908.1102 is amended by redesignating paragraph (a)(4) as 908.1102–70 Vehicle leasing to conform to the FAR convention, and adding the phrase "All subsequent lease renewals or extensions may be exercised only when General Service Administration (GSA) has advised that it cannot furnish the vehicle(s) as prescribed herein."

2. Section 908.1104(f) is amended by removing "Federal Property Management Regulation (FPMR) 41 CFR 101–38.6." and adding in its place "Federal Management Regulation (FMR) 41 Code of Federal Regulation (CFR) 102–34.160, 102–34.175 and 102–34.80" to provide the updated citation.

3. Section 908.7101–2(a) is amended by removing "FPMR 41 CFR 101–25.304, 101–26.501, and 101–38.13 and DOE–PMR 41 CFR 109–25.304, 109–38.13, and 109–38.51" and adding in its place "Federal Property Management Regulations (FPMR) 41 CFR 101–26.501, and FMR 41 CFR 102–34, and Department of Energy-Property Management Regulations (DOE–PMR) 41 CFR 109–26.501" to provide the updated citation.

4. Section 908.7101–2 paragraph (b) is amended by removing "on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice," and adding in its place "utilizing GSA's on-line system (Auto Choice)" to update the procedures.

5. Section 908.7101–3 is amended by removing "those" in the third sentence and removing in the last sentence, "(See DOE–PMR 41 CFR 109–38.5102–4)" to correct grammar and to remove an out-of-date citation.

6. Section 908.7101–4 is amended in paragraph (a) by removing "FMPR 101–38.9 and DOE–PMR 41 CFR 109–38.9" and adding in its place "FMR 102–34.270" to update the citation.

7. Section 908.7101–5 is amended in the third sentence by removing "38.5102" and adding in its place "26.501–50 and 109–26.501–51," to update the citation.

8. Section 908.7101–6 is amended in paragraph (a) by removing the last three sentences and adding in their place "Such forecast shall be submitted to the Property Executive, or designee, when requested.

9. Section 908.7101–6 is amended in paragraph (b) by removing "Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will" and adding in its place "Approved sedans, station wagons, and light trucks requisitioned, but not contracted for by GSA until the subsequent fiscal year, shall" to update the procedures.

10. Section 908.7101–7 is amended in paragraph (a) by removing "101–38.303" and adding in its place "102–34.140" to update the citation.

11. Section 908.7101–7 is amended in paragraph (b) by removing in the second sentence the "," after records; removing in the second sentence the "Director, Office of Property Management," and adding in its place "Director, Personal Property Management Division," to correct grammar and update office names.

12. Section 908.7101–7 is amended in paragraph (e) by removing the sentence and adding in its place "See DOE–PMR 41 CFR 109–38.202–2 and 109–38.202–3 for additional guidance." to update the citation.

13. Section 908.7102 is amended by removing the sentence and adding in its place "Acquisition of aircraft shall be in accordance with FMR 41 CFR 102–33, subpart B and DOE Order 440.2B latest revision." to update the citation.

14. Section 908.7103 is amended by removing "FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403, and DOE–PMR 41 CFR 109–25.302, 109–25.302–3, and 109–25.4" and by adding in its place "FPMR 41 CFR 101–25.104, 101–25.302, and DOE–PMR 41 CFR 109–25.302, and 109–25.4" to update the citations.

15. Section 908.7104 is amended by removing "FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–1, 101–25.302–5, 101–25.302–7, and 101–25.302–8, 101–25.404 and 101–26.505, and DOE–PMR 41 CFR 109–25.302, 109–25.302–1, and 109–25.350" and adding in its place "FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–5, 101–25.302–7, 101–25.404 and 101–26.505, and DOE–PMR 41 CFR 109–25.302, and 109–25.350" to update the citations.

16. Section 908.7121 is revised to update the first paragraph to clarify that the contracting officers shall require authorized contractors to follow procedures set forth in paragraphs (a) through (c).

17. Section 908.7121(b) *Precious metals* is revised to update the responsible office in subparagraph (1) and add subparagraph (2) to reference 945.604–1 for contractor identification and reporting for contractor inventory containing precious metals or possessing precious metals excess.

18. Section 908.7121(c) is amended to state that lithium is available from The National Nuclear Security Administration (NNSA), Y–12 National Security Complex in Oak Ridge, TN (Y–12) and that the excess quantities at Y–12 are to be the first source of supply.

19. Part 945 is amended to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of Government property in the possession of contractors to conform to FAR Part 45 Government Property regulation.

20. Section 945.000 is amended by lower casing the first letter of the word "part"; by reversing "operating and management" to read "management and operating"; and by removing the second sentence in its entirety.

21. Section 945.101 is amended by removing the definition of capital equipment; and adding a definition of sensitive property. For clarity, since the FAR definition of sensitive property was changed under FAC 2005–17 and for further emphasis by DOE, the FAR definition is incorporated by reference.

22. Section 945.102–70 is revised in the first paragraph, first sentence, by removing "Within 30 days after the end of each fiscal year," and adding in its place "The below listed information may be required to be reported from time to time to"; and by removing "Director, Office of Property Management," and adding in its place "Personal Property Management Division"; in paragraph (e), by removing "dollar" and adding in its place "acquisition"; and in paragraph (e), by removing "as reported on last semiannual asset report (including date of report),". These changes correct the reporting process and provide the correct title of the receiving activity. Changes pertain to the Property Information Database System (PIDS) which was created by the Idaho National Lab and has been in use since the late 1990s. The PIDS system is used by both DOE and Contractors alike.

23. Subpart 945.1 is revised to add the new section "945.102–72 Reporting of contractor sensitive property inventory" to reflect the current sensitive property policy.

24. Section 945.3 is amended by redesignating subpart 945.3 and section 945.303–1 as section 945.170 and section 945.170–1, respectively, and by reserving section 945.3 and by using lower case letters for "property" and "contractors" in the section 945.170 title, and by adding a period at the end of "contractors". These changes are made to conform to the FAR.

25. Subpart 945.4 is amended by removing and reserving this subpart in its entirety to conform to the FAR.

26. Section 945.5 title is amended by removing "Management of Government Property in the Possession of Contractors" and adding in its place "Support Government Property Administration" to conform to the FAR.

27. Section 945.505–11 is removed in its entirety to conform to the FAR.

28. Subpart 945.5 is revised by changing its title to "945.570 Management of Government property in the possession of contractors" to conform to the FAR.

29. Section 945.506 is removed in its entirety.

30. Section 945.570–2 is redesignated as 945.570–1 and is amended at paragraph (c) the second sentence by removing "(GSA Form 1781)", and adding "via GSA Autochoice" after "should be processed". The replaced information updates the DEAR to conform to GSA's current procedures.

31. Redesignated 945.570–1(f) is amended by removing "Motor Vehicle Rental" and adding in its place "Leasing of Automobiles and Light Trucks".

32. Section 945.570–7 is redesignated as 945.570–2.

33. Section 945.570–8 is redesignated as 945.570–3 and is revised in section (a) in the first sentence, by removing "(on or before December 1)".

34. Redesignated 945.570–3(b) is amended after "DOE-owned" by adding ", GSA leased"; before "and/or" and by adding "electronically" before "submit".

35. Redesignated 945.570–3(b)(1) is amended by removing "DOE Report of Motor Vehicle Data (passenger vehicles)" and adding in its place "Annual Motor Vehicle Fleet Report".

36. Redesignated section 945.570–3(b)(2) is amended by removing "DOE Report of Truck Data" and adding in its place "Federal Fleet Report (41 CFR 102–34.335)".

37. Subpart 945.6 is amended by removing the subpart title "Reporting, Redistribution, and Disposal of Contractor Inventory" and adding in its place "Reporting, Reutilization, and Disposal".

38. Subpart 945.6 is amended by adding a new section "945.602 Reutilization of Government property."

39. Subpart 945.6 is amended by adding a new section "945.602–70 Local screening".

40. Section 945.603 is redesignated as 945.670, DOE disposal methods.

41. Section 945.603–70 is amended by redesignating this section as "945.670–1"; and removing "FAR Subpart 45.6" and adding in its place "48 CFR 45.606–3". This amendment is to conform the DEAR to the FAR.

42. Section 945.603–71 is redesignated as "945.670–2"."

43. Subpart 945.6 is amended by adding a new section 945.603 Abandonment, destruction or donation of excess personal property which refers to 945.670 for disposal methods. These changes are made to conform to the FAR and move current DEAR information to a new section.

44. Subpart 945.6 is revised by adding a new section 945.604 Disposal of surplus property to conform to the FAR.

45. Section 945.607–2(b) is redesignated as 945.604–1 Recovering precious metals. The office name and address are updated. Paragraph (d) references 945.670 for DOE disposal methods. By adding the other precious metals, we are aligning the DEAR to FAR 46.101.

47. Section 945.608–2 is redesignated as "945.602–3(a)" and is amended by removing subparagraph (b)(1) in its entirety and adding in its place "(a) *Standard screening.* (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulation 41 CFR 102–36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 15 days." These changes are made to update the DEAR to the current on-line reporting.

50. Redesignated section 945.602–3(a)(1)(i) [previously 945.608–2(b)(1)] is amended by in the first sentence, by removing "REAPS" and adding in its place "EADS"; in the first sentence, by removing "address code" and adding in its place "Activity Address Code (AAC)"; by removing the second sentence in its entirety and adding in its place "The AAC will be assigned by DOE Headquarters upon receipt of a formal letter of authorization signed by the DOE contracting officer,", and by removing the third sentence in its entirety. These changes are made to update the current procedure.

51. Redesignated section 945.602–3(a)(1)(ii) is amended by removing the sentence in its entirety and adding a new sentence to indicate that any changes to an Activity Address code shall be submitted to the Office of Procurement and Assistance Management, Personal Property Management Division, within the Headquarters procurement organization.

52. The section designated as 945.608–3 is removed. Section 945.602–70 Local screening provides the correct process and title for property screening and disposal.

53. The section designated as 945.608–4 is removed.

54. Section 945.608–5 is redesignated as 945.602–3(b)(2) and is amended in the first paragraph, by adding "(b) *Special screening requirements.* (2) *Special test equipment with commercial components*—" prior to the redesignated text.

55. Section 945.608–5(c) is redesignated as 945.602–3(b)(3).

56. Section 945.608–6 is redesignated as 945.670–3; and is amended in paragraph (a) after requirements, by removing "in accordance with the provisions of FAR 45.608–6."; in both

paragraphs, by removing "Office of Property Management Division" and adding in its place "Personal Property Management Division"; and in paragraph (b) by removing "HCA" and adding in its place "Procurement Directors".

57. Section 945.610–4 is redesignated as 945.671.

58. Section 970.5244–1(k) is amended by removing the paragraph in its entirety and adding in its place "*Government Property*". The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property."

59. Section 970.5244–1(q)(13) is added to correct an error in the DEAR Final Rule [74 FR 36376–36378, dated July 22, 2009] which omitted "Products made in Federal and penal and correctional institutions—41 CFR 101–26.702."

60. Section 970.5245–1 is amended by removing and reserving paragraph (i)(1)(ii)(B). This amendment clarifies the contract conditions for property management systems approval.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," [58 FR 51735, October 4, 1993]. Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," [61 FR 4729, February 7, 1996], imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. This proposed rule does not alter any substantive rights or obligations and consequently, this proposed rule will not have a significant cost or administrative impact on contractors, including small entities.

On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, [64 FR 43255, August 4, 1999], imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations [65 FR 13735]. DOE has examined the proposed rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This rulemaking proposes changes that do not alter any substantive rights or obligations. This

proposed rule does not impose any mandates.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, [66 FR 28355, May 22, 2001] requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at [67 FR 8452, February 22, 2002], and DOE's guidelines were published at [67 FR 62446 October 7, 2002]. DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Approval by the Office of the Secretary of Energy

Issuance of this proposed rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 908, 945, and 970

Government procurement.

Issued in Washington, DC, on February 2, 2011.

Patrick M. Ferraro,

Acting Director, Office of Procurement and Assistance Management, Department of Energy .

Joseph W. Waddell,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

For the reasons set out in the preamble, the Department of Energy (DOE) proposes to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 7101, *et seq.;* 50 U.S.C. 2401, *et seq.*

2. Section 908.1102 is revised to read as follows:

908.1102 Presolicitation requirements.

2a. Section 908.1102–70 is added to read as follows:

908.1102–70 Vehicle leasing.

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program. All subsequent lease renewals or extensions may be exercised only when GSA has advised that it cannot furnish the vehicle(s) as prescribed herein.

908.1104 [Amended]

3. Section 908.1104 is amended by removing "(FPMR) 41 CFR 101–38.6" in paragraph (f) and adding in its place "Federal Management Regulation (FMR) 41 CFR 102–34.160, 102–34.175, and 102–34.180".

4. Section 908.7101–2 is amended by:

a. Revising paragraph (a); and

b. Removing "on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice," in paragraph (b), and adding in its place "utilizing GSA's on-line system (Auto Choice)".

The revision reads as follows:

908.7101–2 Consolidated acquisition of new vehicles by General Services Administration.

(a) New vehicles shall be procured in accordance with Federal Property Management Regulations (FPMR) 41 CFR 101–26.501, and FMR 41 CFR 102–1 through 102–220, and Department of Energy-Property Management Regulations (DOE–PMR) 41 CFR 109–26.501.

Orders for all motor vehicles must be placed using GSA's online vehicle purchasing system (AutoChoice).

* * * * *

908.7101–3 [Amended]

5. Section 908.7101–3 is amended by removing "those" in the third sentence; and "(See DOE–PMR 41 CFR 109–38.5102–4)" in the last sentence.

908.7101–4 [Amended]

6. Section 908.7101–4 is amended by removing "FPMR 41 CFR 101–38.9 and DOE–PMR 41 CFR 109–38.9." in paragraph (a), and adding in its place. "FMR 41 CFR 102–34.270."

908.7101–5 [Amended]

7. Section 908.7101–5 is amended by removing "109–38.5102," in third sentence and adding in its place "109–26.501–50 and 109–26.501–51,".

908.7101–6 [Amended]

8. Section 908.7101–6 is amended by:

a. Removing the last three sentences in paragraph (a), and adding in their place "Such forecast shall be submitted to the Property Executive, or designee."; and

b. Removing "Sedans" at the beginning of the first sentence of paragraph (b) and adding "Approved sedans" in its place;

c. Removing in paragraph (b) "according to an approved forecast" and removing "will" and adding in its place "shall".

908.7101–7 [Amended]

9. Section 908.7101–7 is amended by:

a. Removing "FPMR 41 CFR 101–38.303." in paragraph (a) and adding in its place "FMR 41 CFR 102–34.140.";

b. Removing in paragraph (b) in the second sentence, "records," and adding in its place "records";

c. Removing in paragraph (b) "Director, Office of Property Management," and adding in its place "Director, Office of Personal Property Management Division,"; and

d. Removing "109–38.3 and 109–38.6" in paragraph (e) and adding in its place "109–38.202–2 and 109–38.202–3".

10. Section 908.7102 is revised to read as follows:

908.7102 Aircraft.

Acquisition of aircraft shall be in accordance with FMR 41 CFR part 102–33, subpart B and DOE Order 440.2B latest revision.

908.7103 [Amended]

11. Section 908.7103 is amended by removing "101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403," and "109–25.302–3," and adding in its place "FPMR 41 CFR 101–25.104, 101–25.302, and DOE–PMR 41 CFR 109–25.302, and 109–25.4."

908.7104 [Amended]

12. Section 908.7104 is amended by removing "FMPR 41 CFR 101–25.104, 101–25.302, 101–25.302–1, 101–25.302–5, 101–25.302–7 and 101–25.302–8, 101–25.404 and 101–26.505 and DOE PMR 41 CFR 109–25.302, 109–25.302–1 and 109–25.350" and adding in its place "FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–5, 101–25.302–7, 101–25.404 and 101–26.505 and DOE–PMR 41 CFR 109–25.302 and 109–25.350."

13. Section 908.7121 is revised to read as follows:

908.7121 Special materials.

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials may be unclassified, the specific quantities, destination or use may be classified (see appropriate sections of the Classification Guide). Contracting officers shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the following procedures:

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Request for orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* (1) NNSA, Y–12 National Security Complex in Oak Ridge, TN is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. The NNSA Y–12 National Security Complex has assigned management of these precious metals to its Management and Operating (M&O) contractor. DOE and NNSA offices and authorized contractors shall coordinate with the Y–12 M&O contractor regarding the availability of these metals prior to purchasing in the open market.

(2) For contractor inventory containing precious metals or possessing precious metals excess, see 945.604–1 for contractor identification and reporting.

(c) *Lithium.* Lithium is available from Y–12 at no cost other than normal packing, handling, and shipping charges from Oak Ridge. The excess quantities at Y–12 are the first source of supply prior to procurement of lithium compounds from any other source.

14. Part 945 is revised to read as follows:

PART 945—GOVERNMENT PROPERTY

Authority: 42 U.S.C. 7101, *et seq.;* 50 U.S.C. 2401, *et seq.*

945.000 Scope of part.

This part and 48 CFR part 45 are not applicable to the management of property by management and operating contractors, unless otherwise stated.

Subpart 945.1—General

945.101 Definitions.

Personal property, as used in this part, means property of any kind or interest therein, except real property; records of the Federal Government; and nuclear and special source materials, atomic weapons, and by-product materials.

Sensitive property, as used in this part, has the meaning contained in 48 CFR 45.101.

945.102–70 Reporting of contractor-held property.

The information listed in this section may be required to be reported from time to time to the Head of the Contracting Activity shall report the following information to the Personal Property Management Division, within the Headquarters procurement organization:

(a) Name and address of each contractor with DOE property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOE office, Defense Contract Management Command, or the Office of Naval Research).

(d) Date of most current appraisal of contractor's property management system, who conducted the appraisal, and status of the system (satisfactory or unsatisfactory).

(e) Total acquisition value of DOE property for each DOE contract administered by the contracting activity.

945.102–71 Maintenance of records.

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

945.102–72 Reporting of contractor sensitive property inventory.

(a) For Department of Energy (DOE) sensitive property, the Organizational Property Management Officer (OPMO) shall submit a contractor-specific list of sensitive property to the DOE Property Executive, Office of Resource Management, or designee, by October 31st of each year for review and approval. The DOE Property Executive or designee will provide the approved contractor-specific list to the appropriate Contracting Officer and OPMO.

(b) For National Nuclear Security Administration (NNSA) sensitive property, the OPMO shall submit a contractor-specific list of sensitive

property to the Director NNSA, Office of Acquisition and Supply Management, or designee, by October 31st of each year for review and approval. The Director, NNSA or designee, will provide the approved contractor-specific list to the appropriate Contracting Officer and OPMO.

945.170 Providing Government property to contractors.

945.170–1 Policy.

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. *Special nuclear material* means uranium enriched in the isotopes U233 or U235, and/or plutonium, other than PU238. The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise approved by the Head of the Contracting Activity.

Subpart 945.3 [Reserved]

Subpart 945.4 [Reserved]

Subpart 945.5—Support Government Property Administration

945.570 Management of Government property in the possession of contractors.

945.570–1 Acquisition of motor vehicles.

(a) GSA Interagency Fleet Management System (GSA–IFMS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA–IFMS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by GSA–IFMS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days after GSA has determined that it can provide the required vehicle.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions shall be processed via GSA Autochoice in accordance with 41 CFR 101–26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Leasing of Automobiles and Light Trucks, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Personal Property Management Division, within the Headquarters procurement organization shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted directly to GSA when approved by the contracting officer.

(i) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

945.570–2 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms (SF–97).

945.570–3 Reporting motor vehicle data.

(a) Contractors conducting motor vehicle operations shall forward annually to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned, GSA leased and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and electronically submit the following annual year-end reports to the contracting officer:

(1) Annual Motor Vehicle Fleet Report.

(2) Federal Fleet Report (41 CFR 102–34.335).

Subpart 945.6—Reporting, Reutilization, and Disposal

945.602 Reutilization of Government property.

945.602–3 Screening.

(a) *Standard screening.* (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulations 41 CFR 102–36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 15 days.

(i) EADS requires the inclusion of a six character Activity Address Code (AAC) which identifies the reporting contractor. The AAC will be assigned by DOE Headquarters upon receipt of a formal letter of authorization signed by the DOE contracting officer.

(ii) Requests to establish, extend or delete an Activity Address Code shall be submitted by the contracting officer to the Office of Procurement and Assistance Management, Personal Property Management Division, within the Headquarters procurement organization.

(b) *Special screening requirements.* (2) *Special test equipment with commercial components.*—Prior to reporting the property to GSA in accordance with 48 CFR 45.604–1(a), (b) and (c), the property shall be reported and screened within DOE in accordance with 945.602–3(a) and 945.602–70.

(3) *Printing equipment.* All printing equipment excess to requirements shall

be reported to the Office of Administration at Headquarters.

945.602–70 Local screening.

Local screening shall be done using EADS.

945.603 Abandonment, destruction or donation of excess personal property.

See 945.670 for DOE disposal methods.

945.604 Disposal of surplus property.

945.604–1 Disposal methods.

(b)(3) *Recovering precious metals.* Contractors generating contractor inventory containing precious metals or possessing precious metals excess to their programmatic requirements, shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE Business Center for Precious Metals Sales & Recovery (Business Center). This includes Gold, Silver, Platinum, Rhodium, Palladium, Iridium, Osmium, and Ruthenium in any form, shape, concentration, or purity. Report all RCRA contaminated precious metals, but not radiological contaminated. The Y–12 NNSA Site Office is responsible for maintaining the DOE Business Center. Precious metals scrap will be reported to the DOE Business Center.

(d) See 945.670 for DOE disposal methods.

945.670 DOE disposal methods.

945.670–1 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in 48 CFR 45.606–3.

945.670–2 Disposal of radioactively contaminated personal property.

Special procedures regarding the disposal of radioactively contaminated property may be found at 41 CFR 109–45.50.

945.670–3 Waiver of screening requirements.

(a) The Director of the Personal Property Management Division, within the Headquarters procurement organization may authorize exceptions from screening requirements.

(b) A request to the Director of the Personal Property Management Division, within the Headquarters procurement organization for the waiver of screening requirements must be submitted by the Procurement Directors with a justification setting forth the compelling circumstances warranting the exception.

945.671 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with DOE–PMR 41 CFR part 109–43, subpart 109–43.5, and part 109–45, subpart 45.51.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

15. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

970.5244–1 [Amended]

16. Section 970.5244–1 is amended by:

a. Revising the clause date to read as set forth below; and

b. Revising clause paragraph (k) and adding a paragraph (q)(13).

The revisions and additions read as follows:

970.5244–1 Contractor purchasing system.

* * * * *

CONTRACTOR PURCHASING SYSTEM (XXX 20XX) [abbreviated month and year of the date of publication of the final rule]

* * * * *

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property.

* * * * *

(q) * * *

(13) Products made in Federal penal and correctional institutions—41 CFR 101–26.702

* * * * *

17. Section 970.5245–1 is amended by:

a. Revising the date of the clause to read as set forth below;

b. Removing and reserving paragraph (i)(1)(ii)(B).

The revisions read as follows:

970.5245–1 Property.

* * * * *

PROPERTY (XXX 20XX) [abbreviated month and year 30 DAYS AFTER date of publication of the final rule]

* * * * *

(i) * * *

(1) * * *

(ii) * * *

(B) [Reserved]

* * * * *

[FR Doc. 2011–4350 Filed 3–3–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–0041, Notice No. 1]

49 CFR Part 234

RIN 2130–AC12

Systems for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing amendments to its primary regulations on grade crossing safety. The major amendments proposed would require a railroad that dispatches a train through a public or private highway-rail or pathway grade crossing to establish and maintain a system that allows a member of the public to call the railroad and report an emergency or other unsafe condition at the crossing. Upon receiving such a report, the railroad would be required to warn all trains authorized to operate through the crossing of the reported unsafe condition, inform local law enforcement of the reported unsafe condition, and either investigate the report itself or request that the railroad with maintenance responsibility for the crossing investigate the report. If the report is substantiated, the railroad with maintenance responsibility for the crossing would be required to take certain actions to remedy the condition found.

DATES: Written comments must be received by May 3, 2011. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to May 3, 2011, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2009–0041 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online 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:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please *see* the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Beth Crawford, Transportation Specialist, Grade Crossing Safety and Trespass Prevention, Office of Safety Analysis, FRA, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6288), *beth.crawford@dot.gov;* or Matthew Navarrete, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–0738), *matthew.navarrete@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Statutory Background

The proposed rule is intended specifically to help implement Sec. 205 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Division A, which was enacted October 16, 2008, and generally to increase safety at highway-rail and pathway grade crossings. *See* 49 U.S.C. 20152, Notification of grade crossing problems, and definitions in proposed § 234.301. Sec. 205 of RSIA mandates that the Secretary of Transportation (Secretary) require certain railroad carriers (railroads) to take a series of specified actions related to setting up and using systems for the public to notify the dispatching railroad of grade crossing problems. A separate statutory provision, 49 U.S.C. 20103, gives the Secretary very broad authority to prescribe rail safety regulations and issue rail safety orders pursuant to notice-and-comment procedures. The Secretary has delegated the responsibility to carry out both Sec. 205 of RSIA and 49 U.S.C. 20103 to the Administrator of FRA. 49 CFR 1.49(m), (oo). Essentially, Sec. 205 of RSIA imposes a mandate requiring FRA as the Secretary's delegate to prescribe regulations or orders imposing the requirements specified in that section; FRA has chosen to require the railroads to set up and use a notification program specified by Sec. 205 of RSIA by conducting a rulemaking and prescribing a regulation.

In particular, under Sec. 205 of RSIA, FRA is to require railroads to "establish and maintain a toll-free telephone service for rights-of-way over which the railroad dispatches trains" through "the grade crossing of railroad trains on those rights-of-way and public or private roads," "to directly receive calls reporting" any of three types of unsafe conditions at the grade crossings or other safety-related information involving such a grade crossing. Under that section, the three types of reportable unsafe conditions are as follows: (1) Malfunctions of warning signals, crossing gates, and other devices intended to promote safety at the highway-rail grade crossing; (2) disabled vehicles blocking railroad tracks at such grade crossings; and (3) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to such a grade crossing. To the extent that the requirements proposed in this NPRM exceed the requirements specified by Sec. 205 of RSIA, such as covering pathway grade crossings, FRA relies primarily upon its general safety rulemaking authority under 49 U.S.C. 20103.

In addition to specifying the requirement that the Secretary must impose on dispatching railroads to establish a telephonic notification system, Sec. 205 of RSIA includes a series of additional specifications to be reflected in FRA's regulation. When a railroad receives a report of a malfunction of a warning signal, crossing gate, and/or other device intended to promote safety at the grade crossing or a report of a disabled vehicle blocking a railroad track at a grade crossing through which the railroad dispatches a train, the dispatching railroad must immediately contact trains operating near the grade crossing to warn them of the malfunctioning device or disabled vehicle. After contacting the trains as necessary, the dispatching railroad must contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities. When a railroad receives a report of either obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to the grade crossing or other safety information involving such grade crossings, the railroad must timely investigate the report, remove the obstruction if possible, or correct the unsafe condition.

Further, under Sec. 205 of RSIA, FRA must require that the owner of the track at the grade crossing "ensure the placement * * * of appropriately located signs" bearing, at a minimum, a toll-free telephone number to be used by the public for placing calls to report unsafe conditions at the crossing to the railroad that dispatches trains on that right-of-way through the crossing, an explanation of the purpose of that toll-free telephone number, and the grade crossing number assigned to that crossing by the U.S. Department of Transportation (DOT) National Crossing Inventory File.

Finally, Sec. 205 of RSIA allows FRA to waive the requirement in the mandated rule that the telephone service be toll-free for Class II and Class III rail carriers if the agency determines that the toll-free service would be cost prohibitive or unnecessary.

II. History of Accidents Relevant to This Rulemaking

There are approximately 221,000 public and private at-grade highway-rail and pathway grade crossings in the United States. In other words, the country has 221,000 locations where a collision can occur between a train and a car, truck, or other motor vehicle, or a pedestrian at any one time. Grade crossing collisions are among the most challenging areas in FRA's efforts to reduce deaths and injuries along the Nation's railroads. In fact, since 1997, grade crossing collisions have caused more railroad-related fatalities per year than any other single factor except for trespassing on railroad property. During the 11-year period from 1999–2009, 2,306 collisions occurred at highway-rail and pathway grade crossings where a vehicle was stalled or sight obstructions were reported to FRA. *See* accident reporting regulations at 49 CFR part 225 and 49 CFR 234.7.

A train striking a pedestrian can result in serious injury or death. Further, a collision between a train and a vehicle of any size can be catastrophic. Serious injuries or deaths are far more likely to occur with a collision between a train and a vehicle than with a collision between two vehicles. While significant improvements have been achieved over the last two decades, grade crossing collisions still pose a significant public safety threat that can spiral beyond the immediate impact of the vehicle and train.

The derailment of a train as a result of a collision at the grade crossing can have a disastrous effect on the train crew or even on an entire community, especially if the derailment results in a release of hazardous material that necessitates the evacuation of a neighborhood or the community. Moreover, if a passenger train derails as a result of a collision, the risk of injuries extends beyond the vehicle occupants to the crew and passengers of the train. This was the case in 1999 in Bourbonnais, Illinois, when a National Railroad Passenger Corporation (Amtrak) passenger train struck a truck loaded with steel at a highway-rail grade crossing. Almost the entire train derailed, causing 11 deaths and 131 injuries to the passengers and crew of the train.

Other vehicles and pedestrians in the vicinity of a highway-rail or pathway grade crossing collision can also be at grave risk. This was the scenario in 1993 when an Amtrak passenger train collided with a gasoline tanker truck at a highway-rail grade crossing in Ft. Lauderdale, Florida. The truck driver was attempting to cross through a grade crossing where traffic was congested. The tanker truck was punctured when it was struck by the Amtrak train; a fire erupted and engulfed the truck and nine other vehicles near the crossing. The fire killed the driver of the truck and five occupants of three stopped vehicles near the grade crossing.

III. History of Emergency Notification Systems

A. In General

The ability to provide an effective means for a member of the public to immediately alert the railroad to an emergency situation or other unsafe condition at a highway-rail or pathway grade crossing enables the railroad and local public safety officials to respond earlier to avert a serious incident. Currently, all Class I railroads have put in place some sort of means by which they can receive notification from the public of any emergency or unsafe condition at most of their grade crossings, whereas many regional and short line railroads do not have any such kind of notification system in place. The proposed rule would require certain railroads to implement such a system, which this proposed rule calls an Emergency Notification System (ENS), covering public and private highway-rail and pathway grade crossings.

B. Various ENS Programs in the United States

In 1983, the State government of Texas established the first toll-free call-in program in the United States that has enabled the public to notify a State call center of problems at the State's public highway-rail grade crossings equipped with automated warning devices. In the current Texas program, after receiving such a call, the Texas call center operated by the Texas Department of Public Safety in turn notifies the railroad involved. The call-in system requires that a sign be posted at the highway-rail grade crossing with the crossing's unique identifying number from the U.S. DOT National Crossing Inventory File, as well as a toll-free telephone number. Texas's call center has a dedicated computer with a modified inventory database that facilitates the call recipient's identification of the relevant crossing and railroad. The Center operator then calls the appropriate railroad and relays the report of the problem. At last report the Texas system handles more than 1,200 calls per month for the State's public crossings, even though only those crossings equipped with active warning devices are equipped with the signs containing the Center's toll-free telephone number. It should be noted that if FRA adopts the proposed rule, railroads using State programs for notification of unsafe conditions at grade crossings, such as Texas's program, may no longer comply with the regulation. However, a State would be allowed to operate as a "third-party telephone service" as described in the proposed rule as long as the program complies with all the conditions specified.

Following the successful establishment of this program in Texas, and in part at the urging of FRA and the National Transportation Safety Board (NTSB), our Nation's major railroads have voluntarily adopted similar systems for the majority of their highway-rail and pathway grade crossings, sometimes including all grade crossings, *i.e.,* systems not limited only to public highway-rail grade crossings or only to those equipped with active warning devices. Unfortunately, more than 72,000 public and private highway-rail and pathway grade crossings belonging to our Nation's short line and regional railroads are not included. Many of these railroads do not have 24-hour operations and do not have the resources to establish such a call-in program.

In 1994, Congress directed FRA to conduct pilot projects in at least two States to demonstrate the efficiency of such "emergency notification system" programs covering highway-rail grade crossings and to report to Congress on the results of the programs. Sec. 301, "Emergency Notification of Grade Crossing Problems," of Public Law 103–440 (108 Stat. 4626). Initial efforts were spent in a cooperative effort with the Texas Department of Emergency Management evaluating the Texas system. Texas was designated one of the pilot States, and an extensive list of software, hardware, and operating improvements was developed. FRA prepared and implemented new software on an upgraded system in 1999. Based on comments and suggestions, further improvements were implemented in 2001 when the Texas call center operation was transferred to the Texas Department of Public Safety.

This 2001 version was modified for use by a 911 center in Clinton County, Pennsylvania, with the participation of eight short line railroads. A 30-month demonstration program was initiated in November 2001.

In 2002, an agreement was reached with the Paducah & Louisville Railroad to conduct an additional pilot project (the third). At the time this was a

regional railroad with 24-hour operations and approximately 400 grade crossings. FRA modified the program software to accommodate the railroad's needs.

Further, the 1994 Highway-Rail Crossing Safety Action Plan issued by DOT recommended an automated telephone answering system for handling telephone calls to report emergencies, malfunctions, and other safety-related problems at highway-rail intersections. However, the automated system proved to be unworkable, whereas the staffed systems were successful.

C. FRA's 2006 Report to Congress

In May 2006, as mandated by Congress in Sec. 301, "Emergency Notification of Grade Crossing Problems," of Public Law 103–440, FRA published a report to Congress outlining the development of ENS programs up to that date (Report). A copy of the Report can be found at *http://www.fra.dot.gov/downloads/safety/1_800_report.pdf.* The Report covered, among other things, the Texas ENS program, the Pennsylvania ENS program, Congressional action, NTSB recommendations, and FRA actions. Based on the findings of the Report, FRA made certain recommendations, to Congress. These recommendations were as follows: (1) Class I railroads should continue to implement, augment, and review the emergency notification programs they have initiated; (2) smaller railroads, including commuter railroads, should work cooperatively through The American Short Line and Regional Railroad Association, or another suitable organization or organizations, to establish ENS programs serving member railroads; (3) signs installed or replaced at highway-rail grade crossings should be displayed prominently to crossing users (*e.g.,* mounted on signal masts where practicable) and conform to the Federal Highway Administration's (FHWA) Manual on Uniform Traffic Control Devices (MUTCD) guidance; and (4) any program that does not currently include passive highway-rail grade crossings be expanded to include, at minimum, all such public crossings where it is practicable to do so.

The Report concluded that the pilot ENS programs in both Texas and Pennsylvania afforded the general public a quick and easy means of alerting appropriate railroad officials of safety-related problems. Additionally, the Report concluded that the Texas ENS likely resulted in the prevention of numerous accidents and injuries, and Pennsylvania's ENS, albeit on a smaller scale than Texas's, demonstrated that it is possible to create emergency call systems through the development of agreements with multiple railroads. Finally, the Report emphasized that the Pennsylvania ENS also showed the value of including all highway-rail grade crossings, not just those with train-activated warning devices.

IV. Section-by-Section Analysis

Section 234.1 Scope

FRA proposes to expand this part to include new subpart E, Emergency Notification Systems for Reporting Unsafe Conditions at Highway-Rail and Pathway Grade Crossings. For this reason, FRA proposes to amend the description of the scope of the part, § 234.1, by inserting the following sentence: "[t]his part also prescribes minimum requirements that railroads establish a system for receiving toll-free telephone calls from the public at large about unsafe conditions at highway-rail and pathway grade crossings and taking certain actions in response." Further, for readability of the section, FRA proposes to designate the text of proposed § 234.1 as two paragraphs, with paragraph (b) consisting of the last sentence of current § 234.1.

Section 234.3 Application and Responsibility for Compliance

FRA also proposes to amend § 234.3, Application. Currently, that section, says that, except for § 234.11 (which requires certain States to file State-specific grade crossing safety action plans), part 234 applies to all railroads with the exception of three types. The first type of railroad not subject to part 234 is a railroad that "exclusively operates freight trains only on track which is not part of the general railroad system of transportation." 49 CFR 234.3(a). This existing exception is intended to cover "plant railroads" as defined in proposed § 234.5, discussed below. The second category of railroads not subject to part 234 is "[r]apid transit operations within an urban area that are not connected to the general railroad system of transportation." 49 CFR 234.3(b). The third category of railroads not subject to part 234 is each "railroad that operates passenger trains only on track inside an installation is insular * * *." The term "insular" is explained in the rest of the exception. 49 CFR 234.3(c).

Proposed § 234.3(a) would clarify that these same three categories—(1) Plant railroads, (2) urban rapid transit operations not connected to the general railroad system of transportation, and (3) insular tourist, scenic, historic, and excursion railroads (tourist railroads) that are not part of the general railroad system of transportation—are exempt from the requirements of part 234. *See* 49 CFR part 209, app. A for a discussion of the term "general railroad system of transportation" (general system). FRA's reasons for excluding these three categories of railroads are policy or statutory. FRA almost never exercises its statutory safety jurisdiction over plant railroads as a matter of policy. FRA lacks statutory jurisdiction over urban rapid transit operations not connected to the general system. *See* 49 U.S.C. 20102, 20103. As a matter of policy, FRA generally does not exercise its statutory jurisdiction over tourist railroads that operate only off the general system; however, part 234 is an existing example of an FRA safety regulation that does apply to tourist railroads that operate only off the general system but only if the tourist railroads are noninsular, *e.g.,* because they have a public highway-rail grade crossing that is in use.

In addition, proposed paragraph (b) of § 234.3 explains that even though a provision of part 234 is stated as requiring certain action by a railroad, a railroad may not avoid fulfilling the requirements of this part by using contractors or subcontractors. For example, if a railroad uses a contractor to put up ENS signs required by proposed § 234.311, FRA will still enforce the provisions of § 234.311 to ensure that the proper signs have been posted and maintained. FRA will hold the railroad liable for its contractor's or subcontractor's failing to fulfill the requirements of this proposed part.

Section 234.5 Definitions

FRA proposes three amendments to the existing "Definitions" section for part 234. First, FRA proposes to amend part 234's existing definition of "credible report of system malfunction." Currently, subpart C and proposed subpart E refer to "credible reports of warning system malfunctions" rather than "credible report of system malfunction." To address this inconsistency, FRA proposes to replace "credible report of system malfunction" with "credible report of warning system malfunction" in § 234.5. Furthermore, as a minor clarification within the definition of "credible report of system malfunction," FRA proposes to replace "an identified highway-rail crossing" with "an identified highway-rail grade crossing." "[H]ighway-rail crossing" would be replaced with "highway-rail grade crossing" because Subpart C was never intended to apply to grade-separated highway-rail crossings because Subpart C deals only with

reports of warning system malfunctions and grade-separated highway-rail crossings are not equipped with warning systems.

Second, FRA proposes to add a definition of "FRA." The term would be an acronym meaning the Federal Railroad Administration of the U.S. Department of Transportation.

Finally, FRA proposes to add a definition of "plant railroad." The term refers to a type of operation that has traditionally been excluded from the application of FRA regulations because it is not part of the general railroad system of transportation. There is a more extensive explanation of the general railroad system of transportation in appendix A to 49 CFR part 209, and it is explicitly defined there as "the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas."

Subpart E—Emergency Notification Systems for Reporting Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

FRA proposes to amend part 234 by adding new subpart E, Emergency Notification Systems for Reporting Unsafe Conditions at Highway-Rail and Pathway Grade Crossings (proposed subpart E), which would include §§ 234.301–234.317.

Section 234.301 Definitions

This proposed section contains definitions of terms used in proposed subpart E, listed alphabetically without designations. "Automated answering service" means a type of answering service in which a telephone call is answered by any means other than a human being speaking live to the caller at the time the call is made. Multiple provisions in proposed subpart E prohibit a railroad from using an automated answering service to receive calls. *See* proposed §§ 234.303(a), 234.305(h)(2), 234.307(a), and 234.307(b)(2). The rationale for this prohibition is FRA's belief that because in certain scenarios, such as a disabled vehicle blocking the crossing, time is of the essence, and speaking to a human being rather than a machine or recording reduces the time required to initiate the appropriate remedial action, thus improving the opportunity to avert a collision. FRA is considering and seeks comment regarding setting forth a maximum amount of time a caller must wait before a call is answered by the railroad.

"Class II" and "Class III" have the meanings assigned by regulations of the Surface Transportation Board, which may be found at 49 CFR part 1201, General Instructions 1–1, Classification of carriers. To ensure that the definitions of "Class II" and "Class III" as used in this proposed subpart incorporate any changes that the Surface Transportation Board may make after the publication of this proposed subpart, FRA's definition includes any revision to the regulations as applied by the Surface Transportation Board, which includes modifications in the class threshold based on revenue deflator adjustments.

In certain scenarios the railroad that dispatches or otherwise provides the authority for the movement of a train through a grade crossing (such as movement on the mainline under yard limit authority) is not the same railroad that has maintenance responsibility for that crossing. To address this type of situation, FRA proposes to use the terms "dispatching railroad" and "maintaining railroad." "Dispatching railroad" is defined as a railroad that dispatches or otherwise provides the authority for the movement of one or more trains through a highway-rail or pathway grade crossing. The definition of "maintaining railroad" is discussed below.

To properly receive notification of unsafe conditions at grade crossings, a railroad or group of railroads would be required to implement a system that consists of multiple components. To refer to the entire set of these various components, the term "Emergency Notification System" or its abbreviation ("ENS") is used. Specifically, "Emergency Notification System" means a system in place by which a railroad informs the public how to report an unsafe condition at a highway-rail or pathway grade crossing and enables the public to do so and receives, processes, and attends to reports of unsafe conditions at highway-rail or pathway grade crossings. The required components of an Emergency Notification System are as follows: (1) Signs, placed and maintained at the grade crossings by the railroad responsible for maintaining the crossing, that display the information necessary for the public to report an unsafe condition at the grade crossing to the railroad that dispatches trains through the crossing; (2) the method that the dispatching railroad uses to receive and process a telephone call reporting the unsafe condition; (3) the remedial actions that the dispatching railroad takes to address the report of the unsafe condition; (4) the remedial actions that the maintaining railroad takes if the dispatching railroad does not have maintenance responsibility; and (5) the recordkeeping conducted by the railroad or railroads in response to the report of the unsafe condition at the grade crossing. Although the word "emergency" is part of the term "Emergency Notification System," FRA does not intend to imply that all reportable unsafe conditions are emergencies, *i.e.,* conditions that create an imminent hazard of death or injury to an individual or damage to property. In other words, some reportable unsafe conditions are not emergencies. The term "Emergency Notification System" is used in part because of its use in the 1994 legislation and its use colloquially.

It may be noted that this proposed section lacks a proposed definition of "highway-rail grade crossing." Such a proposed definition is unnecessary because the current definition in § 234.5 applies to part 234 as a whole and would apply to proposed subpart E. Existing § 234.5 defines "highway-rail grade crossing" as "a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways crosses one or more railroad tracks at grade."

"Maintaining railroad" means the owner of the track at the highway-rail or a pathway grade crossing. If the track owner has contracted out the responsibility to maintain the warning system or track structure at a highway-rail or a pathway grade crossing, the contractor is considered the "maintaining railroad" for the purposes of this subpart. As mentioned previously, the railroad that dispatches a train through a grade crossing and the railroad that maintains the crossing may not necessarily be the same entity. To address this scenario, FRA proposes a definition for "maintaining railroad."

"Pathway grade crossing" means a pathway that has all of the following characteristics: (1) It is explicitly authorized by a public authority or a railroad; (2) it is dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others; (3) it is not associated with a public highway, road, or street, or a private roadway; and (4) it crosses one or more railroad tracks at grade. Sec. 205 of RSIA provides that the Secretary should require railroads to provide for telephonic notification of safety problems at "the grade crossing of railroad tracks on those rights-of-way and public or private roads." 49 U.S.C. 20152(a)(1)(A) and references to "such grade crossings" in 49 U.S.C. 20152(a)(1)(B)–(D). In other words, Sec. 205 of RSIA does not mention pathway grade crossings. Section 2 of RSIA, however, defines "crossing," as used in RSIA, as a location, other than a location where one more railroad tracks

cross one or more railroad tracks, where—

(A) A public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

(B) A pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

122 Stat. 4848, 4849–50. Since the term "crossing," as defined in section 2 of RSIA, includes pathway grade crossings, proposed subpart E will also include pathway grade crossings. Furthermore, during the 11-year period from 1999–2009, 22 deaths and 13 injuries resulted from accidents at pathway grade crossings. It is reasonable to expect that an ENS system that includes pathway grade crossings would increase the safety of pathway grade crossings by increasing the likelihood that the public will notify railroads of unsafe conditions there and enable the railroads to intervene in time to avert accidents at the crossings and any resulting fatalities and injuries. Therefore, FRA believes that the inclusion of pathway grade crossings in proposed subpart E is "necessary" for "railroad safety" within the meaning of 49 U.S.C. 20103.

FRA recognizes that the definition of "crossing" from section 2 of RSIA includes public, private, and pathway crossings that are grade separated; however, at this time FRA does not intend to expand part 234 and proposed subpart E to include grade-separated crossings. FRA declines to include grade-separated crossings in the proposed rule either because the unsafe conditions that an ENS addresses do not occur at grade-separated crossings [1] or because there is no clear, unambiguous place to put an ENS sign at a grade-separated highway-rail or pathway crossing; therefore, an ENS at grade-separated crossings would not be effective to increase the safety of those crossings.

Section 234.303 Telephonic Notification of Unsafe Conditions at Highway-Rail or Pathway Grade Crossings

Proposed § 234.303(a) requires each railroad that dispatches a train through a highway-rail or pathway grade crossing, or provides authority for a train to traverse such a crossing, to set up a system to directly receive telephonic notification of certain unsafe conditions at the crossing. This proposed section would require these dispatching railroads to establish and maintain a toll-free telephone service by which the railroad can directly receive calls from the public reporting any of the unsafe conditions listed in proposed § 234.303(b) (with respect to highway-rail grade crossings) and § 234.303(c) (with respect to pathway grade crossings).

FRA recognizes that in certain scenarios there may be multiple railroads dispatching trains on one or more tracks through one highway-rail or pathway grade crossing. While FRA believes that an ENS should include these types of crossings, it is not clear whether the responsibility to receive reports of unsafe conditions at these types of crossing should fall on one railroad or whether each railroad that dispatches a train through the crossing should be responsible to receive reports. FRA seeks comments on how to handle these types of situations.

The frequency with which a crossing is used does not determine whether it is included in the system established pursuant to proposed § 234.301(a). FRA believes that it is important to provide an immediate means to communicate a notice of an unsafe condition even at grade crossings traversed infrequently. Imagine, for example, the driver of a logging truck stuck at a seldom-used private crossing in the Rocky Mountains with no knowledge of what actions to take or whom to contact.

The FRA Administrator, as the Secretary's delegate, has the discretion to issue a waiver to a Class II or Class III railroad relieving it from the requirement that the telephone number used be toll-free. 49 U.S.C. 20152(b); 49 CFR 1.49. The Administrator may waive the toll-free telephone service requirement for a Class II or Class III railroad if the Administrator determines that the use of a toll-free telephone service would be cost prohibitive or unnecessary. FRA's procedures for seeking a waiver are at 49 CFR part 211 (*e.g.,* §§ 211.7, 211.9, and 211.41).

A railroad that dispatches a train through a highway-rail or pathway grade crossing or provides authority for a train to traverse such a grade crossing must be able to directly receive calls through the toll-free telephone service. "Directly" does not necessarily mean that the railroad must be the first entity that receives the telephone call when the toll-free service is used. However, "directly" does mean that only a limited number of entities may be placed between the caller reporting the unsafe condition(s) at the grade crossing and the dispatching railroad. FRA proposes that only one entity may exist between the caller and the railroad. This restriction is addressed further in proposed § 234.307. Regardless if an additional entity is used, the railroad ultimately remains responsible for setting up and using a system by which it can receive notification of unsafe conditions at a grade crossing and take the appropriate action in response to a notification. This responsibility is placed on the railroad because it is in the best position to immediately contact and warn the trains authorized to operate through the grade crossing about which the report pertains.

The four types of unsafe conditions at highway-rail grade crossings that are to be reportable through the ENS system are set forth in proposed § 234.303(b). (Again, the four types of unsafe conditions at pathway grade crossings that are to be reportable through the ENS system are listed in proposed § 234.303(c).) The first type of reportable unsafe condition at a highway-rail grade crossing is a warning system malfunction at the crossing. "Warning system malfunction," as defined in proposed § 234.5, means an activation failure, a partial activation, or a false activation of a highway-rail grade crossing warning system. The terms "activation failure," "partial activation," and "false activation" are all defined in existing § 234.5 as well.

The second type of reportable unsafe condition at a highway-rail grade crossing is a disabled vehicle or other obstruction blocking a railroad track at the crossing. As mentioned in Section II of this preamble, a significant number of collisions between a train and a vehicle have occurred at highway-rail grade crossings due to a vehicle blocking the railroad tracks at the crossing, with many of these collisions resulting in injuries and fatalities. While FRA acknowledges that not all of these incidents may have been prevented by the presence of an ENS, such a system increases the likelihood that the dispatching railroad will learn of the disabled vehicle in time to alert any trains authorized to operate through that crossing, thus potentially averting a collision and any resulting casualties. Further, other obstructions, aside from a disabled vehicle, may block the tracks at a crossing and create an unsafe condition that needs to be reported to the railroad. For instance, as a result of a severe storm, a large tree may fall onto the tracks at a highway-rail grade crossing, and if a railroad is not alerted

[1] For example, warning system malfunctions do not occur at grade-separated crossings because grade-separated crossings do not have warning systems.

about this unsafe condition, a train that is authorized to operate through that crossing could collide with the downed tree, thus potentially causing a derailment. Under Sec. 205 of RSIA, the second category of unsafe conditions is a disabled vehicle blocking the tracks at a grade crossing. To the extent that FRA's proposed rule requires more than Sec. 205 of RSIA would have it require, the agency relies on its general safety rulemaking authority.

The third type of a reportable unsafe condition at a highway-rail crossing is an obstruction to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to the crossing. FRA's Track Safety Standards provide that "vegetation on railroad property which is on or immediately adjacent to the roadbed shall be controlled so that it does not [o]bstruct visibility of railroad signs and signals [a]t highway-rail grade crossings." 49 CFR 213.7(b)(1) (§ 213.7(b)(1)). Proposed § 234.303(b)(3) allows a member of the public to inform the railroad of conditions at highway-rail grade crossings that may not fall under § 213.7(b)(1), but that, in the individual's opinion, present an unsafe condition involving a sight obstruction at the crossing. FRA seeks comment regarding what is a "reasonable distance" to determine whether an obstruction to a pedestrian or vehicle operator's view of a train's approach to a highway-rail grade crossing presents an unsafe condition at the grade crossing.

The final type of reportable unsafe condition at a highway-rail grade crossing is any condition at the crossing that may be considered unsafe and is not covered by § 234.303(b)(1)–(3). A downed or missing crossbuck sign illustrates the type of condition at a highway-rail grade crossing that may be deemed unsafe, and therefore should be reported to the railroad, but does not fall into one of the three other categories. However, a downed or missing crossbuck sign is merely an example and is not intended to be an exhaustive list of the various conditions that may be considered unsafe under this catch-all provision.

Proposed § 234.303(c) sets forth the four types of reportable unsafe conditions at pathway grade crossings as opposed to highway-rail grade crossings. These four types of reportable unsafe conditions at pathway grade crossings are, essentially, the same as those for highway-rail grade crossings, but, as detailed below, the four types of reportable unsafe conditions at pathway grade crossings are not described in the exact same words, and unlike the first type of report for a highway-rail grade crossing, the first type of report for a pathway grade crossing does not trigger the duty to address the report in the manner prescribed by existing 49 CFR part 234, subpart C (subpart C).

The first type of reportable condition for a pathway grade crossing is a failure of the active warning system at the pathway grade crossing to perform as intended. Proposed § 234.303(c)(1) does not use term "warning system malfunction" to refer to a failure of an active warning system at a pathway grade crossing because, as defined in § 234.5, a "warning system malfunction" is an activation failure, partial activation, or false activation of the active warning system at a highway-rail grade crossing, not a pathway grade crossing. Further, "activation failure," "partial activation," and "false activation" are all defined in § 234.5 and only apply to highway-rail grade crossings. FRA has not proposed specific standards regarding the maintenance and repair of active warning systems at pathway grade crossings and does not intend to do so at this time. However, FRA does intend to require that certain railroads provide the public with a means to report when the active warning system at a pathway grade crossing is not performing as intended and is creating an unsafe condition at the crossing.

While the term "failure of the active warning system at the pathway grade crossing to perform as intended" as used in proposed § 234.303(c)(1) is not specifically defined, FRA believes that the term sufficiently addresses the scenarios in which an active warning system at a pathway grade crossing malfunctions and poses a significant safety risk to a pathway grade crossing user. FRA seeks comment regarding the types of failures of an active warning system at a pathway grade crossing that may differ from failures of active warning systems at highway-rail grade crossings. Additionally, FRA seeks comment regarding how the maintenance and repair of an active warning system at a pathway grade crossing differ from the required maintenance and repair of an active warning system at a highway-rail grade crossing.

The second type of reportable unsafe condition at a pathway grade crossing is an obstruction blocking a railroad track at the crossing. To avoid confusion, the term "disabled vehicle" is purposely omitted from proposed § 234.303(c)(2), though it is used in proposed § 234.303(b)(2), because, as defined in proposed § 234.301, a "pathway grade crossing" is, among other things, dedicated for the use of nonvehicular traffic; thus, by the definition, a vehicle should not be using a pathway grade crossing. However, to ensure that all possible scenarios in which an obstruction could be blocking the tracks at a pathway grade crossing, including certain disabled vehicles that may be using the pathway (such as all-terrain vehicles, golf carts, maintenance vehicles, or snowmobiles), § 234.303(c)(2) uses the broad term "obstruction."

The third type of reportable unsafe condition at a pathway grade crossing is an obstruction to the view of a pathway user for a reasonable distance in either direction of a train's approach to the crossing. *See* discussion of proposed § 234.303(b)(3).

The final type of reportable unsafe condition at a pathway grade crossing is any condition at the crossing that may be considered unsafe and is not covered by § 234.303(c)(1)–(3). *See* discussion of proposed § 234.303(b)(4).

As mentioned previously, the FRA Administrator has the discretion to waive the requirement that the ENS telephone number be toll-free for Class II and Class III railroads. The Administrator may waive the toll-free requirement for these railroads if he or she determines that the use of a toll-free service would be cost prohibitive or unnecessary. FRA believes that there may be certain scenarios in which a caller would be discouraged from reporting an unsafe condition at a grade crossing because the use of a non-toll-free number would impose an additional cost on the caller as opposed to if a toll-free number was used. Further, the requirement for the number to be toll-free may be overly burdensome to a short line or other small railroad. To avoid these types of situations, FRA proposes in § 234.303(d) that if a Class II or Class III railroad dispatches trains within an area in which the use of a non-toll-free number would not incur any additional fees for the caller compared to if a toll-free number was used, then that railroad may use that non-toll-free number to receive calls pursuant to § 234.303(a) regarding each grade crossing in that area.

Paragraph (e) ensures that if a report of an unsafe condition at a highway-rail or pathway grade crossing was not made through the telephone service described in proposed § 234.303(a), subpart E does not apply. Since subpart E only sets forth the requirements of an ENS and the actions taken in response to a report of unsafe condition received through an ENS, a report that is not received

through an ENS does not invoke the requirements in subpart E.

FRA is considering whether to extend proposed subpart E to cover all public highway-rail grade crossings located within a port, or dock facility, railroad yard or private industrial facility and such a facility/yard is subject to part 234 as set forth in amended § 234.3. If these types of crossings are covered by proposed subpart E, FRA is considering whether to treat all of the crossings located in such facilities/yards as a single public highway-rail grade crossing for the purposes of proposed subpart E. These areas often have a significant number of crossings located in a small area, and FRA believes that it may be impracticable to consider each crossing within these areas as a separate grade crossing. Treating all the public highway-rail grade crossings within these facilities/yards as one public highway-rail grade crossing is consistent with the U.S. DOT National Highway-Rail Crossing Inventory, Policy, Procedures and Instructions for States and Railroads, published August 2007, which can be found at— *http://www.fra.dot.gov/downloads/safety/RXIPolicyInstructions0807.pdf.* FRA seeks comment whether proposed subpart E should be extended to incorporate public highway-rail grade crossings located within a port, or dock facility, railroad yard or private industrial facility. FRA also seeks comment whether it is practicable to treat all of the public highway-rail grade crossings within such facilities/yards as one public highway-rail grade crossing for the purposes of proposed subpart E.

Section 234.305 Remedial Actions

Proposed § 234.305 addresses the actions that a railroad must take in response to an ENS-generated report of an unsafe condition at a highway-rail or pathway grade crossing. Paragraph (a) of the proposed section is the general rule on required response to ENS-generated credible reports of warning system malfunctions. If a railroad receives an ENS-generated report of a warning system malfunction that is a credible report of warning system malfunction and the railroad has maintenance responsibility for the warning system at the highway-rail grade crossing to which the report pertains, the railroad is required to take the appropriate action as required by subpart C. As defined in proposed § 234.5, a "credible report of warning system malfunction" is "specific information regarding a malfunction at an identified highway-rail grade crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity." If a report of a warning system malfunction is not provided by one of the four specific types of people listed, then the report is not a credible report of system malfunction within the meaning of both subpart C and proposed subpart E, and subpart C does not require any remedial action in response to those reports. It should be noted that a credible report of warning system malfunction only applies to highway-rail grade crossings and does not include pathway grade crossings. At this time FRA does not plan to expand the definition of "credible report of warning system malfunction" to include pathway grade crossings. Thus, regardless of who reports a warning system malfunction at a pathway grade crossing, the report is not considered a "credible report of warning system malfunction" within the meaning of both subpart C and proposed subpart E. However, it is important to note that the term "credible" does not go to the accuracy or truthfulness of the report; rather, it distinguishes the type of person providing the report to the railroad. Just because a report is not considered a "credible report of warning system malfunction," as defined by proposed § 234.5, does not mean that it is not accurate or truthful.

If the report is a credible report of warning system malfunction, but the railroad that initially receives the report is not the railroad that has maintenance responsibility for the warning system at the highway-rail grade crossing to which the report pertains, that railroad is already responsible for contacting the trains that are authorized to operate through the highway-rail grade crossing and warn the trains of the reported malfunction under subpart C. After warning the trains, the railroad must then contact the railroad that has maintenance responsibility for the warning system at the highway-rail grade crossing, which will then be responsible for taking the appropriate remedial action under subpart C. FRA recognizes that in many instances the railroad that initially receives the report may not be the railroad that has maintenance responsibility over the warning system at that crossing. Therefore, to ensure that the responsibility to take the appropriate remedial action as required by subpart C falls on the appropriate railroad, proposed § 234.305(a)(2) requires the railroad with maintenance responsibility to take the appropriate remedial action under subpart C, except for immediately contacting the trains operating through the crossing; this responsibility remains with the dispatching railroad.

Paragraph (b) of proposed § 234.305 is the general rule on response to ENS-generated reports of warning system malfunctions at highway-rail grade crossings that are not considered credible reports of warning system malfunctions as defined by proposed § 234.5 and requires that railroads take certain specified remedial action in response to those reports. In other words, proposed § 234.305(b) addresses ENS-generated reports of warning system malfunctions that do not fall within the amended definition of "credible report of warning system malfunction" in § 234.5 because the report is made by someone who is not a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity. In particular, if a railroad receives a report of a warning system malfunction that is not a credible report of warning system malfunction and that railroad has maintenance responsibility for the warning system at the crossing, the railroad must immediately contact all trains that are authorized to operate through the grade crossing about which the report pertains and warn those trains of the reported malfunction. The railroad must then promptly contact the law enforcement agency that has jurisdiction over the crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the grade crossing. Further, the railroad must promptly investigate the report and determine the nature of the malfunction and, if necessary, take appropriate action as required by a provision of existing 49 CFR part 234, subpart D, *i.e.,* § 234.207(a), which requires that "[w]hen any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay."

If a railroad receives a report of a warning system malfunction that is not a credible report of warning system malfunction and that railroad does not have maintenance responsibility for the warning system at the highway rail grade crossing, the railroad must immediately contact all trains that are authorized to operate through the grade crossing to which the report pertains and warn those trains of the reported malfunction. The railroad must then promptly contact the law enforcement agency that has jurisdiction over the

grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the grade crossing. The railroad must then promptly contact the railroad that has maintenance responsibility for the warning system and inform that railroad of the reported malfunction. The railroad having maintenance responsibility must promptly investigate the report, determine the nature of the malfunction and take the appropriate action as required by § 234.207(a) if necessary.

Proposed § 234.305(c) is the general rule on response to a warning system failure at a pathway grade crossing. If the dispatching railroad receives a report pursuant to § 234.303(c)(1) and that railroad also has maintenance responsibility for the active warning system at the pathway grade crossing, the railroad shall immediately contact all trains that are authorized to operate through the pathway grade crossings to which the report pertains and warn the trains of the reported failure. The railroad shall then promptly contact the law enforcement agency having jurisdiction over the pathway grade crossing and provide the necessary information to the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing. Finally, the railroad shall the promptly investigate the report and determine the nature of the reported failure and repair the warning system if necessary.

If the dispatching railroad receives a report of a warning system failure at a pathway grade crossing and that dispatching railroad does not have maintenance responsibility for the warning system at the pathway grade crossing, the dispatching railroad must immediately contact all trains that are authorized to operate through the pathway grade crossing to which the report pertains and warn those trains of the reported failure. The dispatching railroad must then promptly contact the law enforcement agency that has jurisdiction over the pathway grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing. The dispatching railroad must then promptly contact the railroad that has maintenance responsibility for the warning system at the pathway grade crossing and inform that railroad of the reported failure. The railroad having maintenance responsibility shall then promptly investigate the report and determine the nature of the reported failure and repair the warning system if necessary.

Proposed § 234.305(d) is the general rule on a dispatching railroad's response to reports of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing through which it dispatches trains. When a railroad receives a report of a disabled vehicle or obstruction blocking a railroad track at a grade crossing, the railroad must immediately contact all trains that are authorized to operate through the grade crossing to which the report pertains and warn the trains of the reported disabled vehicle or obstruction. Once all of the necessary trains are contacted, the railroad must then contact the law enforcement agency having jurisdiction over the grade crossing to provide that agency with the information necessary to assist in the removal of the disabled vehicle or other obstruction or carry out other activities as appropriate. FRA is considering and seeks comments on whether to require the railroad that receives the report (dispatching railroad) to contact the maintaining railroad if the obstruction is anything other than a disabled vehicle. The maintaining railroad would then be responsible for contacting the law enforcement agency and any other entities to assist in directing traffic (if necessary) and removing the obstruction.

Proposed § 234.305(e) is the special rule on contacting a train that is not required to have communication equipment. Section 220.9 of FRA's regulations on railroad communications sets forth communication equipment standards for trains. 49 CFR 220.9 (§ 220.9). These standards vary according to specific criteria set forth in § 220.9. According to § 220.9(b), no communication equipment is required on a train if that train does not transport passengers or hazardous material and does not engage in joint operations or operate at greater than 25 miles per hour. *See* 63 FR 47188; § 220.9(b)(1)–(4). However, as proposed in subpart E, upon receipt of a report of a warning system malfunction, a warning system failure at a pathway grade crossing, or a disabled vehicle or other obstruction blocking a track, a railroad will be required to immediately contact a train authorized to operate through the highway-rail or pathway grade crossing to which the report pertains. If that train is not required by § 220.9 to have any communications equipment, the railroad must contact that train by the quickest means available. Currently, railroad employees are required by 49 CFR 220.13(a) (§ 220.13(a)) to immediately report certain emergencies by the quickest means available. To maintain consistency among FRA regulations, proposed § 234.305(e) requires that the quickest means used to contact a train upon receipt of a report of a warning system malfunction or disabled vehicle or other obstruction blocking a track at the crossing is consistent with the quickest means that an employee would use to report an emergency pursuant to § 220.13(a).

Proposed § 234.305(f) is the general rule on response to reports of an obstruction to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to the highway-rail or pathway grade crossing (visual obstruction). FRA proposes that when the dispatching railroad receives a report of a visual obstruction and the railroad also has maintenance responsibility for the highway-rail or pathway grade crossing, the railroad shall timely investigate the report and, if the report is confirmed, shall remove the visual obstruction if it is feasible and lawful to do so. If the dispatching railroad does not have maintenance responsibility for the highway-rail or pathway grade crossing, the dispatching railroad shall promptly contact the railroad having maintenance responsibility for the highway-rail or pathway grade crossing, which shall timely investigate the report; and, if the report is confirmed, shall remove the visual obstruction, if it is lawful and feasible to do so. FRA recognizes that in certain instances a visual obstruction may not be removed, such as a natural visual obstruction due to the steepness of the road or path approaching the crossing or a visual obstruction due to the curvature of the track, or it may not be lawful to do so. Therefore, proposed § 234.305(f)(2) imposes a duty on the maintaining railroad to remove the visual obstruction only if it is lawful and feasible to do so. FRA seeks comment on what types of visual obstructions are not feasible to remove.

Proposed § 234.305(g) is the general rule on response to reports of other unsafe conditions at highway-rail or pathway grade crossings. Proposed § 234.305(g)(1) states that if the railroad receives a report related to a safety device at a highway-rail or pathway grade crossing, such as a downed crossbuck, that is not covered by proposed § 234.305(a), (b), or (c), and the railroad has maintenance responsibility for the device, the railroad must timely investigate the report, and if the railroad finds that the unsafe condition exists, the railroad must timely correct it. However, if the

railroad that receives the report does not have maintenance responsibility over the device, upon receipt of the report, the railroad must timely inform the railroad with maintenance responsibility for correcting the unsafe condition. The railroad with maintenance responsibility must then timely investigate the report and if it finds that the unsafe condition exists, it must timely correct it if it is lawful and feasible to do so. FRA seeks comment on what types of other unsafe conditions are not feasible to correct.

Proposed § 234.305(g)(2) states that if the dispatching railroad receives a report relating to any other unsafe condition at the highway-rail or pathway grade crossing that is not covered by proposed § 234.305(g)(1) and the dispatching railroad is also the maintaining for the grade crossing, the dispatching railroad shall timely investigate the report and if it finds that the unsafe condition exists, the dispatching railroad shall timely correct it if it is lawful and feasible to do so. If the dispatching railroad is not the maintaining railroad, the dispatching railroad shall timely inform the maintaining railroad of the report and the maintaining railroad shall timely investigate the report. If, after investigating the report, the maintaining railroad finds that the unsafe condition exists, the maintaining railroad shall timely correct it if it is lawful and feasible to do.

Paragraph (h) is the general rule on contacting the maintaining railroad. If the dispatching railroad is not the same as the maintaining railroad, the maintaining railroad shall provide the dispatching railroad with sufficient contact information by which the dispatching railroad may immediately contact the maintaining railroad upon receipt of a report if necessary. Furthermore, the maintaining railroad shall not use an automated answering service for the purpose of receiving a call from the dispatching railroad.

Section 234.307 Third-Party Telephone Service

Proposed § 234.307 would address the third-party telephone service that a dispatching railroad may use to receive reports concerning an unsafe condition at a highway-rail or pathway grade crossing pursuant to proposed § 234.303.

For a railroad to "directly" receive calls reporting unsafe conditions at a crossing as required by proposed § 234.303, FRA proposes that one entity is the maximum number of entities that may exist between (1) a caller reporting an unsafe condition at a grade crossing and (2) the railroad. FRA believes that allowing more than one entity in between could potentially delay the railroad's receipt of the report and therefore delay its response to the unsafe condition to the extent that the ENS would not be effective. Proposed § 234.307 sets forth the requirements for the third-party telephone service.

FRA recognizes that many regional and short line railroads may not have the capability and resources to set up and operate a 24-hour system to respond to reports of unsafe conditions at highway-rail and pathway grade crossings. To ensure that the public can call in such reports and that more dispatching railroads can receive the reports, the proposed rule allows railroads to use a third-party telephone service.

Paragraph (a) permits a railroad to use a third-party telephone service to receive reports pursuant to proposed § 234.303. FRA believes that it is in the railroad's interest to use a third-party telephone service that is in the business of receiving and processing calls from the public because that is its specialty. Even if the railroad uses a third-party telephone service, the railroad ultimately remains responsible for receiving the report received by the third party, and the railroad is responsible for taking the appropriate remedial action as required by proposed § 234.305 and complying with the proper recordkeeping requirements proposed in § 234.313. The third-party telephone service is merely an extension of the railroad. The third-party service must be reached directly by the telephone number placed on the sign pursuant to proposed § 234.309. Furthermore, the third-party service is prohibited from using an automated answering service, as defined in proposed § 234.301, to receive calls. The railroad remains responsible for ensuring that an automated answering service is not used.

Proposed paragraph (b) obliges a railroad that uses the third-party service to provide the service with sufficient contact information so that when the third-party service receives a report of an unsafe condition at a grade crossing, it can immediately contact the railroad. The railroad is prohibited from using an automated answering service to receive calls from the third-party service. There may be an unsafe condition for which immediate action by the railroad is necessary, such as a disabled vehicle blocking a track at the crossing; therefore, the contact information that the railroad provides the third-party service must be sufficient to the extent that when the third-party service contacts the railroad, a railroad employee answers the call and takes the appropriate action necessary under proposed § 234.305. The responsibility of the third-party service is solely to receive reports and relay those reports to the railroad; any remedial action that is necessary to correct the unsafe condition is the responsibility of the railroad.

Proposed paragraph (b) also requires a railroad to promptly inform FRA of its intent to use a third-party service to receive reports pursuant to proposed § 234.303. The railroad must also provide FRA with the contact information of the third-party service that the railroad intends to use. Further, the railroad must provide FRA with a list of the grade crossings about which the third-party service will be receiving reports pursuant to proposed § 234.303. This information will allow FRA to evaluate whether the use of a third-party service substantially increases the railroad's response time to the extent that, because of the use of the service, the railroad is no longer considered to be receiving calls "directly." Finally, proposed paragraph (b) reaffirms the requirement that once a railroad receives a report of an unsafe condition at a grade crossing pursuant to proposed § 234.303, the railroad must, at a minimum, take the remedial action required by proposed § 234.305.

Proposed paragraph (c) sets forth the duties of the third-party service. The third-party service is required to contact the contracting railroad immediately when the third-party service receives a report pursuant to proposed § 234.303. The third-party service must then provide the contracting railroad with a minimum amount of information. The first type of information that the third-party service must provide is the nature of the reported unsafe condition. The nature of the reported unsafe condition must fall into one of the categories listed in proposed § 234.303(b)(1)–(4) or (c)(1)–(4) so that the contracting railroad can take the appropriate remedial action as required by proposed § 234.305. Second, the third-party service must provide information on the location of the unsafe condition, which includes providing the U.S. DOT National Crossing Inventory File Number for the crossing. Third, the third-party service must inform the contracting railroad whether the person reporting the unsafe condition is a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity. The third-party service is required to provide this information so that the contracting railroad can determine

whether the report is a credible report of warning system malfunction and, if it is, the railroad can take the appropriate remedial action required by proposed § 234.305 and existing subpart C. Finally, the third-party service must provide the contracting railroad with any additional information provided by the caller that may be useful to restore the crossing to a safe condition.

Paragraph (d) ensures that the third-party service, in addition to the contracting railroad, is responsible for complying with proposed subpart E and that both the railroad and the third party service can be held liable for a violation of proposed subpart E.

FRA recognizes that future advances in technology may provide opportunities for call-in systems that are not specifically described in this rule. FRA is willing to review any new technology and consider its applicability to the regulation, or consider amending the regulation in the future if warranted. FRA welcomes comments on any such technologies that meet the requirements of the proposed regulation.

Section 234.309 Signs in General

Proposed § 234.309 would specify the color, minimum required dimensions, contents, and other aspects of the signs that § 234.311 requires to be placed and maintained at highway-rail and pathway grade crossings as part of an ENS. A minimum amount of information must be placed on the sign so that the unsafe condition may be properly reported and remedied. This minimum information is the toll-free number established to receive reports pursuant to § 234.303(a) (or non-toll-free number as provided for in § 234.303(d)), an explanation of the purpose of the sign, and the U.S. DOT National Crossing Inventory File Number assigned to the crossing. To maintain a certain amount of consistency among the signs so that a grade crossing user may be able to easily identify and understand it, FRA proposes that the sign dimensions must be at least 12 inches by 9 inches, the lettering must be, at a minimum, 1 inch in height, and the sign must have a white legend and border on a blue background.

FRA is considering whether the final rule should require that the sign be designed in accordance with the applicable provisions of the FHWA's MUTCD and *Standard Highway Signs and Markings* (SHSM) book. Currently, § 8B.18 of the 2009 edition of the MUTCD provides standards and guidance regarding emergency notification signs. Figure 1 is the example of an emergency notification sign provided in the MUTCD. Further, the new edition of the SHSM book, which had not been published at the time of the writing of this NPRM, provides two alternate designs for emergency notification signs, one of which is identical to the emergency notification sign provided in the MUTCD. The SHSM can be found at *http://mutcd.fhwa.dot.gov/shsm_interim/index.htm.* Figure 2 is an alternate design found in the new edition of the SHSM book. FRA is seeking comment regarding which standards and guidance provided in the MUTCD and SHSM book should be adopted in the final rule as the requirements for the signs placed at crossings pursuant to proposed §§ 234.309 and 234.311.

Figure 1–MUTCD Emergency Notification Sign

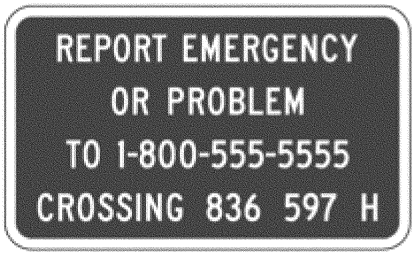
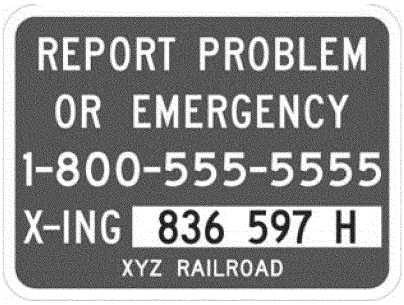


Figure 2 – SHSM Alternate Design



Section 234.311 Sign Placement and Maintenance

Proposed § 234.311 would require signs of the type specified by proposed § 234.309 to be placed and maintained at highway-rail and pathway grade crossings. The maintaining railroad would be responsible for the proper placement and maintenance of the sign. The dispatching railroad would be responsible for providing the telephone number posted on the sign to the maintaining railroad if the two are not the same railroad.

A sign must be placed and maintained for each direction of traffic at that grade crossing. This will ensure that grade crossing users will be able to see the sign from whichever direction they

approach the crossing. A pathway grade crossing is considered to have a minimum of two directions of traffic unless specifically designed for traffic in one direction only.

Each sign placed at a highway-rail or pathway grade crossing must be placed and maintained so that the sign is conspicuous to the users of the roadway or pathway, optimizes nighttime visibility, minimizes the effect of mud splatter and debris, and does not obscure any other sign at the crossing. FRA does not propose a specific location at a crossing where a sign must be placed because such a specific location may not exist at every crossing. However, FRA proposes general requirements regarding the placement of the sign so that the sign may be easily seen and does not interfere with any other traffic control devices at the crossing. FRA is seeking comment on sign placement so the appropriate placement for optimal visual effectiveness of the sign may be determined. FRA is also seeking comment on how many and where to place signs at a highway-rail or pathway grade crossing in which there are multiple railroads dispatching trains on one or more tracks through that crossing.

Proposed paragraph (c) does not prohibit the placement of an ENS sign on a signal bungalow; however, a sign on the signal bungalow and nowhere else at the crossing does not comply with proposed § 234.311. It is difficult to envision a scenario in which placing the sign on the signal bungalow would satisfy all of the requirements in proposed § 234.311(b), particularly, § 234.311(b)(1), which requires a sign to be placed at a grade crossing so that it is conspicuous to the users of the roadway or pathway. FRA seeks comment on other locations at grade crossings where the placement of the sign would not satisfy proposed § 234.311(b).

As mentioned previously, FRA is considering whether to expand proposed subpart E to cover all public highway-rail grade crossings located within a port or dock facility, railroad yard, or private industrial facility and to make such a facility or yard subject to part 234. In turn, if these types of crossings would be covered by proposed subpart E, FRA is considering whether to treat all of the crossings located in such a facility or yard as a single public highway-rail grade crossing for the purposes of proposed subpart E. If these crossings are treated as a single public highway-rail grade crossing, FRA is considering whether to require a sign that conforms to proposed § 234.309 to be placed and maintained as provided under proposed § 234.311(a) and (b) at each point at which a public highway enters the facility or yard. FRA seeks comment whether this would be the optimal location for the sign for these types of facilities or yards if they are covered.

Section 234.313 Recordkeeping

Proposed § 234.313 sets forth the recordkeeping requirements for this proposed subpart that apply to each railroad subject to this proposed subpart. Proposed paragraph (a) of this section requires each railroad to keep records pertaining to compliance with this subpart. Records may be kept on paper forms generated by the railroad or kept electronically in a manner that conforms with proposed § 234.315. Each railroad must keep the following information for each report received under the proposed subpart: (1) The nature of the reported unsafe condition; (2) the location of the grade crossing (by highway name and U.S. DOT National Crossing Inventory File Number); (3) the time and date of receipt of the report by the railroad; (4) whether the person who provided the report was a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity; (5) the actions taken by the railroad prior to rectifying the reported unsafe condition; (6) the actions taken by the railroad to rectify, if possible, the reported grade crossing problem; (7) the date and time at which the reported unsafe condition was rectified; and (8) if the railroad is required to contact the railroad with maintenance responsibility, the time and date the railroad contacted the railroad having maintenance responsibility. FRA is considering whether to require the railroad to also record the caller's name and contact information so the railroad can follow-up with the caller if necessary. FRA seeks comment on what other information the railroad should be required to record.

Subpart C at 49 CFR 234.109 (§ 234.109) already has specific recordkeeping requirements for a railroad that receives a credible report of warning system malfunction; therefore, there is no separate recordkeeping requirement in proposed subpart E for credible reports of warning system malfunction. Proposed § 234.313(c) requires that each railroad retain for at least one year (from the latest date of railroad activity in response to a report received under this part) all records that it makes that are required by this section. Records required to be kept must be made available to FRA as provided by statute (49 U.S.C. 20107).

Section 234.315 Electronic Recordkeeping

Proposed § 234.315 would address the keeping of records required by proposed subpart E electronically. This proposed section applies to railroads that choose to conduct electronic recordkeeping under proposed subpart E. These proposed electronic recordkeeping requirements are modeled after the requirements set forth in 49 CFR 217.9(g).

If a railroad chooses to conduct electronic recordkeeping of records required by proposed subpart E, the railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who is allowed to create, modify, or delete data from the database. Although FRA does not identify the management position authorized to institute changes in the database, the railroad must indicate the source authorized to make such changes. The railroad must have a computer and a facsimile or printer connected to the computer to retrieve and produce records for immediate review. Section 217.9(g) requires the computer to be a desk-top computer. However, FRA recognizes that all railroads may not necessarily maintain their records on a desktop computer, so rather than adopting this requirement from § 217.9(g); FRA proposes to allow railroads the flexibility to maintain their records on other types of computers, such as laptops. However, regardless of the computer on which the railroad maintains its electronic records, it must be possible for a facsimile or printer to be connected to the computer to retrieve and produce records for immediate review. The documents must be made available for FRA inspection during "normal business hours," which FRA interprets as the time, any day of the week, when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the applicable section of part 234 at any reasonable time if situations warrant. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to retain its records electronically must ensure the integrity of the information and prevent possible tampering of data, enabling FRA to fully execute its enforcement responsibilities.

Section 234.317 Compliance Dates

Proposed § 234.317 would state the date by which each of various groups of railroads must comply with this proposed subpart. If a railroad does not have an ENS of any kind in place on the effective date of the subpart, the railroad has 18 months from the effective date of the final rule to implement a system that conforms to the subpart. This paragraph applies to railroads that do not have anything any place that could be considered an ENS as defined in § 234.301. However, if a railroad has a system in place, but some or all of the components do not conform to this subpart, the amount of time the railroad has to bring it into compliance depends on which component is non-compliant.

If a railroad already has its own ENS telephone service or is using a third-party telephone service on the effective date of this subpart, but that telephone service does not comply with the requirements proposed in §§ 234.303 and 243.307, the railroad has six months from the effective date of the final rule to bring the telephone service into compliance.

If a railroad already has ENS signs in place on the effective date, but those signs do not comply with the requirements set forth in proposed § 234.309, subject to proposed § 234.317(d)(2), the railroad has five years from the effective date of the final rule to bring the signs into compliance. If the railroad replaces a non-conforming sign before the five-year period, the railroad must replace the sign with one that conforms to proposed § 234.309. However, there is an exception to this five-year period. To ensure that a non-conforming sign is still large enough to be visible to the majority of grade crossing users, if a sign is less than 60 square inches, the railroad has 18 months from the effective date of the final rule to bring the sign into compliance with proposed § 234.309. If the railroad replaces a non-conforming sign before the 18-month period, the railroad must replace the sign with one that conforms to proposed § 234.309.

FRA is considering whether to reduce the amount of time that the railroad has to bring the sign into compliance based on whether the non-compliant element of the sign effectively renders the sign useless. For example, if a sign does not comply because the telephone number on the sign is not the correct number, the sign is effectively useless because a person is unable to report any unsafe conditions at the crossing to the appropriate railroad. In these instances it is as if there were not a sign at the crossing, thus, the railroad would then have 18 months, as required by § 234.317(a), to place a sign at the crossing. Therefore, FRA is considering reducing the compliance period from five years to 18 months if the non-compliant element of the sign effectively renders the sign useless. FRA seeks comment regarding reducing the compliance period.

If a railroad already has ENS signs in place on the effective date, but the placement of those signs does not comply with the requirements set forth in proposed § 234.311, the railroad has five years from the effective date of the final rule to ensure the placement of the signs conforms to proposed § 234.311. If the railroad changes the placement of the sign before the expiration of the five-year period, the placement of the sign must conform to proposed § 234.311. Furthermore, if a railroad replaces a sign before the expiration of the five-year period so that the sign conforms to proposed § 234.309 and the placement of the sign does not conform to proposed § 234.311, the railroad must also change the placement of the sign so that it conforms to proposed § 234.311.

FRA is considering whether to reduce the amount of time that the railroad would have to bring the placement of the sign into compliance if the only sign at the crossing is placed on the signal bungalow. As mentioned previously, signs placed on a signal bungalow are not considered to be conspicuous to the grade crossing user; therefore, FRA believes that giving the railroad five years to replace signs on the bungalow may be excessive and is considering reducing this period to 18 months. FRA welcomes comments regarding reducing the compliance period from five years to 18 months.

If a railroad already conducts recordkeeping as part of its ENS on the effective date, but the recordkeeping does not conform to proposed § 234.313, the railroad has six months from the effective date of the final rule to ensure that the recordkeeping conforms to proposed § 234.313.

V. Regulatory Impact

A. Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this proposed rule. FRA has met with and made presentations to those who are likely to be affected by this rule in order to seek their views on the rule.

As part of the regulatory evaluation, FRA has assessed quantitative measurements of the cost streams expected to result from the implementation of this proposed rule. For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $36.6 million with a present value (PV, 7 percent) of $18.9 million. The requirements that are expected to impose the largest burdens relate to recordkeeping and the purchase and installation of signs at grade crossings. The table below presents the estimated costs associated with the proposed rulemaking.

Section 234.303—Toll-free telephone service	$2,052,898
Section 234.307—Third-party telephone service	3,520
Section 234.309—Signs (materials)	6,709,437
Section 234.309—Signs (installation)	4,704,433
Section 234.311—Post (materials)	410,379
Section 234.311—Post (installation)	345,293
Section 234.313—Recordkeeping (initial)	363,571
Section 234.313—Recordkeeping (remedial)	4,265,979
Total	18,855,511

Dollars are discounted at a Present value rate of 7 percent.

As part of the regulatory evaluation, FRA has explained what the likely benefits for this proposed rule would be, and provided numerical assessments of the potential value of such benefits. The proposed rulemaking is expected to improve railroad safety by ensuring that all highway-rail and pathway grade crossings have adequate signage to enable the public to inform the railroad of emergencies and other unsafe conditions. The primary benefits include a heightened safety environment in grade crossing areas and potential avoidance of casualties, fatalities, and damage through earlier awareness of track obstructions, including stalled highway vehicles, and other safety hazards. Thus, in general, the proposed rule should decrease grade crossing accidents and incidents and associated casualties and damages. FRA believes the value of the anticipated safety benefits would meet or exceed the cost of implementing the proposed rule. Over a 20-year period, this analysis finds that $49.2 million in cost savings

would accrue through casualty prevention and damage avoidance. The discounted value of this is $23.4 million (PV, 7 percent). The table below presents the estimated benefits associated with the proposed rule.

10.2 Fatalities (Prevented) ...	$17,663,562
10.3 Injuries (Prevented)	4,908,998
10.4 Highway Vehicle Damage (Avoided)	436,715
10.5 Railroad Equipment Damage (Avoided)	249,537
10.6 Track/Structure Damage (Avoided)	138,718
Total	23,397,531

Dollars are discounted at a Present value rate of 7 percent.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No small railroads will be affected by the rule. FRA has prepared and placed in the docket this certification. FRA requests comments on this certification as well as all other aspects of this NPRM.

"Small entity" is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short line railroad" with fewer than 500 employees, or a "commuter rail system" with annual receipts of less than seven million dollars. *See* "Size Eligibility Provisions and Standards," 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies use a different standard for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes "small entities" or "small businesses" as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. The $20-million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

Certain provisions of this proposed rule would apply to all railroads that dispatch trains over highway-rail or pathway grade crossings. Out of the 674 Class III railroads, FRA estimates there are 117 small railroads that do not have a dispatching function as part of their operations and, therefore, would not be affected by these certain provisions of this regulation. Therefore, FRA has concluded that 557 small railroads would be affected by those provisions of this rule. However, the impact on these small railroads would not be significant.

Other provisions of this proposed rule would require railroads that own track at highway-rail or pathway grade crossings (or maintain grade crossing signal warning systems at such crossings per rule text) to incur fixed costs, such as the purchase of signs and posts, which are directly proportional to the number of crossings. Additionally, the number of calls received is also expected to be proportional to the number of highway-rail or pathway grade crossings owned or maintained by each railroad.

Smaller railroads generally have fewer highway-rail or pathway grade crossings than larger railroads do. Although each grade crossing may have the same probability of being the subject of an ENS-generated call, the total burden on smaller railroads should be smaller, when implementing and complying with the major requirements of purchasing signage and recordkeeping. For example, FRA has found that there are 137 extremely small railroads, accounting for 4,408 grade crossings. On average, each of the 137 railroads has approximately 32 grade crossings. Additionally, the average total implementation cost for these railroads is approximately $2,300 per railroad for the first year and $519 per railroad per year for each of the following 14 years. Expressed differently, the cost for these railroads to comply with this proposed rule is about $72 per crossing per railroad for the first year and approximately $16 per crossing per railroad for each of the following 14 years. Railroads with just a few crossings would incur minimal costs to comply with this proposed rule. Thus, FRA believes that this proposed regulation would not have a significant impact on these railroads.

Some small railroads are subsidiaries of large short-line holding companies with the expertise and resources comparable to larger railroads. The proposed requirements to install two new signs per highway-rail or pathway grade crossing and provide a toll-free telephone number to report emergencies and other unsafe conditions would not have a significant impact on these railroads. Short lines affected by this proposed rule might collaborate with other small railroads to jointly implement its requirements, which would lower the burden on these small railroads.

Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad, or $47,000, is far less than the average annual cost that these railroads would incur because of this proposed rule. FRA concludes that the proposed burden would not have a noticeable impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601(b)), FRA certifies that this proposed rule would not have a significant impact on a substantial number of small entities. Although a substantial number of small railroads would be affected by the proposed rule, these entities would be significantly impacted. A more thorough discussion on the basis of this certification can be found in Appendix B of the Regulatory Evaluation, which has been submitted to the docket for this proposed rulemaking. FRA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a final determination for certification of the final rule.

C. Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that the proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This NPRM amends part 234, which contains FRA principal regulations regarding grade crossing safety. Although the final rule on State-specific highway-rail grade crossing action plans published June 28, 2010 (75 FR 36552) removed the preemptive effect provision in part 234, FRA notes that this part could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970 (former FRSA), that is, 49 U.S.C. 20106 (Sec. 20106). Sec. 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to Sec. 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the preemption of State laws covering the subject matter of this proposed rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a safety rule or order. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements are duly designated, and the estimated time to fulfill each requirement is as follows:

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.303(b)—Report to ENS—Unsafe Condition at Highway-Rail Crossing.	594 railroads	63,891 reports	1 minute	1,065 hours.
234.303(c)—Report to ENS Service—Unsafe Condition at Pathway Grade Crossing.	594 railroads	1,860 reports	1 minute	155 hours.
234.305(a)—Reported Malfunction of Warning System at Highway-Rail Grade Crossing Necessitating Immediate Contact by Dispatching RR of All Trains Authorized to Operate through That Crossing.	594 railroads	465 contacts	1 minute	8 hours.
—Contact of Crossing Maintenance Railroad by Dispatching Railroad.	594 railroads	465 contacts	1 minute	8 hours.
—(b) Other Report of Warning System Malfunction at Highway-Rail Grade Crossing Necessitating Immediate Contact by Dispatching RR of All Trains Authorized to Operate Through That Crossing.	594 railroads	925 contacts	1 minute	15 hours.
—Other Report of Warning System Malfunction at Highway-rail Grade Crossing Necessitating Prompt Contact by Dispatching RR of Law Enforcement Agency to Direct Traffic/Maintain Safety.	594 railroads	925 contacts	1 minute	15 hours.
—(2) Other Report of Warning System Malfunction at Highway-rail Grade Crossing Necessitating Immediate Contact by Dispatching RR of All Trains Authorized to Operate Through That Crossing.	594 railroads	925 contacts	1 minute	15 hours.
—Dispatching RR Contact of Law Enforcement Authority to Direct Traffic/Maintain Safety.	594 railroads	920 contacts	1 minute	15 hours.

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Dispatching RR Contact of Maintaining RR re: Malfunction ..	594 railroads	920 contacts	1 minute	15 hours.
234.305(c)(1)—Report of Warning System Failure at Pathway Grade Crossing and Need of Dispatching RR to Contact All Trains Operating Through It.	594 railroads	2 contacts	1 minute	.03333 hour.
—Report of Warning System Failure at Pathway Grade Crossing and Need of Dispatching RR to Contact Law Enforcement Agencies.	594 railroads	2 contacts	.....	.03333 hour.
—(d) Dispatching RR Contact of All Trains Operating Through Highway-rail or Pathway Grade Crossing Upon Receiving Report of Disabled Vehicle or Other Obstruction.	594 railroads	2,556 contacts	1 minute	43 hours.
—Dispatching RR Contact of Law Enforcement Authority Upon Receiving Report of Disabled Vehicle or Other Obstruction.	594 railroads	2,556 contacts	1 minute	43 hours.
—(h) Maintaining RR Provision of Contact Information to Dispatching RR.	594 railroads	10 contacts	1 minute	.1667 hour.
234.307—3rd Party Telephone Service	594 railroads	50 contacts	15 minutes ..	13 hours.
—RR Contact Information to Service	594 railroads	50 letters	60 minutes ..	50 hours.
—RR Notification to FRA of Use of Service	594 railroads	100 contacts	1 minute	2 hours.
—3rd Party Notification to RR of Report Pursuant to section 234.303.	50 third parties	100 contacts	1 minute	2 hours.
234.309(a)—ENS Signs—General—Provision of ENS Telephone Number to Maintaining RR by Dispatching RR.	594 railroads	10 contacts	30 mintues ..	5 hours.
—(b) ENS Signs Located at Highway-Rail or Pathway Grade Crossings as required by section 234.311 with Necessary Information to Receive Reports Required under section 234.303.	594 railroads	422,802 signs	15 minutes ..	105,701 hrs.
234.313—Recordkeeping—Records of Reported Unsafe Conditions Pursuant to Section 234.303.	594 railroads	186,000 records	4 minutes	12,400 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning the following issues: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. Environmental Assessment

FRA has evaluated this proposed rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. (*See* 64 FR 28547, May 26, 1999.) Section 4(c)(20) reads as follows: "(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * * (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation."

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this

proposed rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and Tribal governments and the private sector. For the year 2010, this monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This proposed rule would not result in the expenditure of more than $140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance notice of proposed rulemaking, and notice of proposed rulemaking) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act Statement

Interested parties should be aware that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 234

Highway safety; Penalties; Railroad safety; and Reporting and recordkeeping requirements.

The Proposal

In consideration of the foregoing, FRA proposes to amend part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY, STATE ACTION PLANS, AND EMERGENCY NOTIFICATION SYSTEMS

1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 21301, 21304, 21311, 22501 note; Pub. L. 110–432, Div. A, § 202; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. The heading for part 234 is revised to read as set forth above.

3. Section 234.1 is revised to read as follows:

§ 234.1 Scope.

(a) This part imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. This part also prescribes standards for the reporting by railroad and public agency employees of failures of such systems and prescribes minimum actions that railroads must take when such warning systems malfunction. This part also requires particular identified States to develop State highway-rail grade crossing action plans. This part also prescribes minimum requirements that railroads establish systems for receiving toll-free telephone calls from the public at large about unsafe conditions at highway-rail and pathway grade crossings and for taking certain actions in response to those calls.

(b) This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

4. Section 234.3 is revised to read as follows:

§ 234.3 Application and responsibility for compliance.

(a) With the exception of § 234.11, this part applies to all railroads, all contractors for railroads, and all subcontractors for railroads except the following:

(1) Operations of a plant railroad as defined in § 234.5;

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation; or

(3) Tourist, scenic, historic, or excursion operations conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track) and only on track inside an installation that is insular; *i.e.,* the operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(i) A public highway-rail crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or

(iv) A common corridor with a railroad, *i.e.,* its operations are within 30 feet of those of any railroad.

(b) Although the duties imposed by this subpart are generally stated in terms of the duty of a railroad, each person, including a contractor or subcontractor for a railroad, who performs any task covered by this subpart, shall perform that task in accordance with this subpart.

5. Section 234.5 is revised by revising the definition of "Credible report of system malfunction" and adding definitions of "FRA" and "Plant railroad" in alphabetical order to read as follows:

§ 234.5 Definitions.

As used in this part—

* * * * *

Credible report of warning system malfunction means specific information regarding a malfunction at an identified highway-rail grade crossing, supplied by

a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity.

* * * * *

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

* * * * *

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

* * * * *

6. The heading to subpart C of part 234 is revised to read as follows:

Subpart C—Response to Reports from Railroad and Public Agency Employees of Warning System Malfunction at Highway-Rail Grade Crossings.

* * * * *

7. Subpart E of part 234 is added to read as follows:

Subpart E—Emergency Notification Systems for Reporting Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

Sec.

§ 234.301 Definitions.

As used in this subpart—

Automated answering service means a type of answering service in which a telephone call is answered by any means other than an actual human being speaking live to the caller at the time that the call is made.

Class II and *Class III* have the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised and applied by order of the Board (including modifications in class threshold based on revenue deflator adjustments).

Dispatching railroad means a railroad that dispatches or otherwise provides the authority for the movement of one or more trains through a highway-rail or pathway grade crossing.

Emergency Notification System means a system in place by which a railroad receives, processes, and attends to reports of an unsafe condition at a highway-rail or pathway grade crossing through which it dispatches a train. An Emergency Notification System includes the following components:

(1) Signs, placed and maintained at the grade crossings by the railroad responsible for maintaining the crossing, that display the information necessary for the public to report an unsafe condition at the grade crossing to the railroad that dispatches trains through the crossing;

(2) The method that the dispatching railroad uses to receive and process a telephone call reporting the unsafe condition;

(3) The remedial actions that the dispatching railroad takes to address the report of the unsafe condition;

(4) The remedial actions that the maintaining railroad takes if the dispatching railroad does not have maintenance responsibility; and

(5) The recordkeeping conducted by the railroad or railroads in response to the report of the unsafe condition at the grade crossing.

ENS means Emergency Notification System as defined in this section.

Highway-rail and pathway grade crossing means a highway-way rail grade crossing and a pathway grade crossing.

Highway-rail or pathway grade crossing means either a highway-rail grade crossing or a pathway grade crossing.

Maintaining railroad means the owner of the track at the highway-rail or the pathway grade crossing. If the track owner has contracted out the responsibility to maintain a warning system or track structure at a highway-rail or a pathway grade crossing, the contractor is considered the "maintaining railroad" for the purposes of this subpart.

Pathway grade crossing means a pathway that has all of the following characteristics:

(1) That is explicitly authorized by a public authority or a railroad;

(2) That is dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others;

(3) That is not associated with a public highway, road, or street, or a private roadway; and

(4) That crosses one or more railroad tracks at grade.

§ 234.303 Telephonic notification of unsafe conditions at a highway-rail or pathway grade crossing.

(a) *Duty of dispatching railroad in general.* Each dispatching railroad shall establish and maintain a toll-free telephone service by which the railroad can directly receive calls from the public reporting any of the conditions listed in paragraph (b) of this section with respect to a highway-rail grade crossing through which the railroad dispatches a train and paragraph (c) of this section with respect to a pathway grade crossing through which the railroad dispatches a train. The railroad shall not use an automated answering service for the purpose of receiving reports pursuant to this section.

(b) *Reportable unsafe conditions at highway-rail grade crossings.* Each dispatching railroad shall establish a service pursuant to § 234.303(a) to receive reports or specific information regarding the following conditions with respect to a highway-rail grade crossing through which it dispatches a train:

(1) A warning system malfunction at the highway-rail grade crossing;

(2) A disabled vehicle or other obstruction blocking a railroad track at the highway-rail grade crossing;

(3) An obstruction to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to the highway-rail grade crossing; or

(4) Any information relating to any other unsafe condition at the highway-rail grade crossing.

(c) *Reportable unsafe conditions at pathway grade crossings.* Each dispatching railroad shall establish a service pursuant to § 234.303(a) to receive reports or information regarding the following conditions with respect to a pathway grade crossing through which it dispatches a train:

(1) A failure of the active warning system at the pathway grade crossing to perform as intended;

(2) An obstruction blocking a railroad track at the pathway grade crossing;

(3) An obstruction to the view of a pathway grade crossing user for a reasonable distance in either direction of a train's approach to the pathway grade crossing; or

(4) Any information relating to any other unsafe condition at the pathway grade crossing.

(d) *Class II or III dispatching railroads.* A Class II or Class III railroad that dispatches a train through a highway-rail or pathway grade crossing within an area in which the use of a non-toll-free number would not incur any additional fees for the caller compared to if a toll-free number was used, may use that non-toll-free number to receive calls pursuant to § 234.303(a) regarding each such crossing in that area.

(e) If a report of an unsafe condition at a highway-rail or pathway grade crossing was not made through the telephone service described in paragraph (a) of this section, subpart E does not apply to that report.

§ 234.305 Remedial actions.

(a) *General rule on response to credible reports of warning system malfunction at highway-rail grade crossing.* (1) If a railroad receives a report pursuant to § 234.303(b)(1) that is a credible report of warning system malfunction at a highway-rail grade crossing and the railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall take the appropriate action required by subpart C of this part.

(2) If a railroad receives a report pursuant to § 234.303(b)(1) that is a credible report of warning system malfunction at a highway-rail grade crossing and that railroad does not have maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the highway-rail grade crossing and warn the trains of the reported malfunction. The railroad shall then immediately contact the railroad that has maintenance responsibility for the warning system and inform it of the reported malfunction. The railroad that has maintenance responsibility for the warning system at the highway-rail grade crossing shall take the appropriate action required by subpart C of this part.

(b) *General rule on response to other reports of warning system malfunction at highway-rail grade crossing.* (1) If a railroad receives a report of warning system malfunction pursuant to § 234.303(b)(1) that is not a credible report of warning system malfunction at a highway-rail grade crossing and that railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the highway-rail grade crossing and warn the trains of the reported malfunction. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the highway-rail grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the highway-rail grade crossing. The railroad shall then promptly investigate the report and determine the nature of the malfunction and shall take the appropriate action required by § 234.207(a).

(2) If a railroad receives a report of warning system malfunction pursuant to § 234.303(b)(1) that is not a credible report of warning system malfunction and that railroad has dispatching responsibility for the crossing but does not have maintenance responsibility for the warning system at the highway-rail grade crossing, the railroad shall immediately contact all trains that are authorized to operate through the highway-rail grade crossing to which the report pertains and warn the trains of the reported malfunction. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the highway-rail grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the highway-rail grade crossing. The railroad shall then promptly contact the railroad that has maintenance responsibility for the warning system and inform it of the reported malfunction. The railroad having maintenance responsibility shall promptly investigate the report and determine the nature of the malfunction and shall take the appropriate action required by § 234.207(a).

(c) *General rule on response to warning system failure at a pathway grade crossing.* (1) If a railroad receives a report of warning system failure at a pathway grade crossing pursuant to § 234.303(c)(1) and that railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the pathway grade crossing and warn the trains of the reported failure. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the pathway grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing. The railroad shall then promptly investigate the report and determine the nature of the failure and repair the active warning system if necessary.

(2) If a railroad receives a report of warning system failure at a pathway grade crossing pursuant to § 234.303(c)(1) and that railroad has dispatching responsibility for the pathway grade crossing but does not have maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the pathway grade crossing to which the report pertains and warn the trains of the reported failure. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the pathway grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing. The railroad shall then promptly contact the railroad that has maintenance responsibility for the warning system and inform it of the reported failure. The railroad having maintenance responsibility shall then promptly investigate the report and determine the nature of the failure and shall repair the warning system if necessary.

(d) *General rule on dispatching railroad's response to reports of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing.* Upon receiving a report pursuant to § 234.303(b)(2) or (c)(2), the railroad shall immediately contact all trains that are authorized to operate through the highway-rail or pathway grade crossing to which the report pertains and warn the trains of the reported disabled vehicle or other track obstruction. After contacting the necessary trains, the railroad shall promptly contact the law enforcement agency having jurisdiction over the highway-rail or pathway grade crossing to provide it with the information necessary to assist in the removal of the reported track obstruction or to carry out other activities as appropriate.

(e) *Special rule on contacting a train that is not required to have communication equipment.* If a railroad is not required by § 220.9 of this chapter to have a working radio or working wireless communications in each occupied controlling locomotive of its trains and the dispatching railroad receives a report pursuant to § 234.303(b)(1), (b)(2), (c)(1), or (c)(2)

about a crossing that one of the trains is authorized to operate through, the dispatching railroad shall immediately contact the occupied controlling locomotive of the train as required by § 234.305(a), (b), (c), or (d) by the quickest means available consistent with § 220.13(a) of this chapter.

(f) *General rule on response to reports of obstruction of view at highway-rail or pathway grade crossings.* Upon receiving a report pursuant to § 234.303(b)(3) or (c)(3), the dispatching railroad, if it is also the maintaining railroad, shall timely investigate the report and shall remove the obstruction if it is feasible and lawful to do so. If the dispatching railroad is not the maintaining railroad, the dispatching railroad shall promptly contact the maintaining railroad, which shall timely investigate the report and which shall remove the obstruction, if it is lawful and feasible to do so.

(g) *General rule on response to reports of other unsafe conditions at highway-rail or pathway grade crossings.* (1) Upon receiving a report pursuant to § 234.303(b)(4) or (c)(4) related to the maintenance of a crossbuck sign or other similar grade crossing safety device not covered by § 234.305(a), (b), or (c), the dispatching railroad, if it also has maintenance responsibility for the device, shall timely investigate the report; and, if it finds that the unsafe condition exists, the dispatching railroad shall timely correct it if it is lawful and feasible to do so. If the dispatching railroad does not have maintenance responsibility for the device, the dispatching railroad shall timely inform the railroad with maintenance responsibility for the device, and the maintaining railroad shall timely investigate the report; and, if the maintaining railroad finds that the unsafe condition exists, the railroad shall timely correct it if it is lawful and feasible to do so.

(2) Upon receiving a report pursuant § 234.303(b)(4) or (c)(4), not covered by § 234.305(g)(1), the dispatching railroad, if it is also the maintaining railroad, shall timely investigate the report; and, if it finds that the unsafe condition exists, the dispatching railroad shall timely correct it if it is lawful and feasible to do so. If the dispatching railroad is not the maintaining railroad, the dispatching railroad shall timely inform the maintaining railroad of the report, and the maintaining railroad shall timely investigate the report; and, if the maintaining railroad finds that the unsafe condition exists, the railroad shall timely correct it if it is lawful and feasible to do so.

(h) *General rule on contacting the maintaining railroad and use of an automated answering service.* If the dispatching railroad is required under this section to contact the maintaining railroad, the maintaining railroad shall—

(1) Provide the dispatching railroad with sufficient contact information by which the dispatching railroad may immediately contact the maintaining railroad upon receipt of a report; and

(2) Not use an automated answering service for the purpose of receiving a call from the dispatching railroad.

§ 234.307 Third-party telephone service.

(a) *Use of a third-party service.* A railroad may use a third-party service to directly receive reports pursuant to § 234.303. The third-party service shall be reached directly by the telephone number placed on the sign pursuant to § 234.309. The third-party service shall not use an automated answering service for the purpose of receiving such reports, and the contracting railroad shall ensure that the third-party service does not use an automated answering service for the purpose of receiving such reports.

(b) *Duties of railroad using third-party service.* If a railroad uses a third-party service to directly receive reports pursuant to § 234.303, the railroad—

(1) Shall provide the third-party service with sufficient contact information by which the third-party service may immediately contact the contracting railroad upon receipt of a report;

(2) Shall not use an automated answering service to receive calls from the third-party service for the purpose of receiving reports pursuant to § 234.303;

(3) Shall promptly inform FRA of its intent to use a third-party service and shall provide FRA with contact information for the third-party service, and information identifying the highway-rail and pathway grade crossings about which the third-party service will receive reports; and

(4) Upon being contacted by the third-party service about a report pursuant to § 234.303, the railroad shall take appropriate action as required by § 234.305.

(c) *Duties of third-party service.* Upon receiving a report pursuant to § 234.303, the third-party service shall immediately contact the contracting railroad, and, at a minimum, provide the railroad with the following:

(1) Information on the nature of the reported unsafe condition;

(2) Information on the location of the unsafe condition, including the U.S. DOT National Crossing Inventory File Number;

(3) Information on whether the person reporting the unsafe condition is a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity; and

(4) Any additional information provided by the caller that may be useful to restore the crossing to a safe condition.

(d) *Third-party service and contracting railroad liability.* A third-party service is responsible for complying with this subpart. In addition, the contracting railroad is vicariously liable for the acts or omissions of the third-party service under the contract in violation of this subpart.

§ 234.309 ENS signs in general.

(a) No later than 30 days before the implementation of an ENS, the dispatching railroad for a highway-rail or pathway grade crossing shall provide to the maintaining railroad for the crossing the telephone number to be posted on the ENS sign at the crossing if the dispatching railroad and the maintaining railroad are not the same.

(b) Each ENS sign located at each highway-rail or pathway grade crossing as required by § 234.311 shall have the necessary information for the dispatching railroad to receive reports of unsafe conditions at the crossing. This information, at a minimum, includes the toll-free number (or non-toll-free number as provided for in § 234.303(d)) established to receive reports pursuant to § 234.303(a), an explanation of the purpose of the sign, and the U.S. DOT National Crossing Inventory File Number assigned to that crossing.

(c) Each ENS sign shall be at least 12 inches wide by 9 inches high, have lettering measuring, at a minimum, 1 inch in height, and have a white legend and border on a blue background.

§ 234.311 ENS sign placement and maintenance.

(a) The maintaining railroad for a highway-rail or pathway grade crossing shall place and maintain a sign that conforms to § 234.309 at the crossing for each direction of traffic at that crossing. A pathway grade crossing is considered to have a minimum of two directions of traffic unless specifically designed for traffic in one direction only.

(b) Each sign required by paragraph (a) of this section shall be located and maintained by the maintaining railroad so that it—

(1) Is conspicuous to users of the roadway or pathway;

(2) Optimizes its visibility at nighttime;

(3) Minimizes the effect of mud splatter and debris; and

(4) Does not obscure any other sign at the crossing.

(c) A sign placed on the signal bungalow shall not be deemed to comply with § 234.311(b).

§ 234.313 Recordkeeping.

(a) Each railroad subject to this subpart shall keep records in accordance with paragraph (b) of this section pertaining to its compliance with this subpart. Records may be kept either on paper forms provided by the railroad or by electronic means in a manner that conforms with § 234.315. Each railroad responsible for receiving reports pursuant to § 234.303(a) and, if applicable, each railroad with maintenance responsibility shall keep, at a minimum, the following information for each report received under this subpart:

(1) The nature of the reported unsafe condition;

(2) Location of the highway-rail or pathway grade crossing (by highway name, if applicable, and U.S. DOT National Crossing Inventory File Number);

(3) Time and date of receipt of the report by the railroad;

(4) Whether the person who provided the report was a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity;

(5) Actions taken by the railroad prior to rectifying the reported unsafe condition at the grade crossing;

(6) If the reported unsafe condition is substantiated, actions taken by the railroad to rectify the reported unsafe condition, if possible;

(7) Time and date at which the reported unsafe condition was rectified; and

(8) If a railroad is required by this subpart to contact a railroad with maintenance responsibility, the time and date the railroad contacted the railroad having maintenance responsibility.

(b) A railroad having maintenance responsibility over warning devices at a highway-rail grade crossing that maintains records pursuant to § 234.109, shall be deemed to comply with the recordkeeping requirements of this subpart with regards to credible reports of warning system malfunctions.

(c) Each railroad shall retain for at least one year (from the latest date of railroad activity in response to a report received under this subpart) all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to the FRA as provided by 49 U.S.C. 20107.

§ 234.315 Electronic recordkeeping.

(a) If a railroad subject to this subpart keeps a record required by this subpart electronically in lieu of on paper, the system for keeping the electronic record must meet all of the following conditions:

(1) The railroad adequately limits and controls accessibility to the record retained in its electronic database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the location designated by the railroad as the general office for the railroad system and at each division headquarters;

(3) Each such terminal has a computer and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as a true and accurate copy of the electronically kept record; and

(5) The railroad provides FRA representatives with immediate access to the record for inspection and copying during normal business hours and provides a printout of such record upon request.

(b) If a record required by this part is in the form of an electronic record kept by an electronic recordkeeping system that does not comply with paragraph (a) of this section, then the record must be kept on paper.

§ 234.317 Compliance dates.

(a) If a railroad subject to this subpart does not have an ENS of any kind in place on the effective date of this subpart, the railroad shall implement an ENS that conforms to this subpart no later than 18 months after the effective date of this subpart.

(b) If a railroad subject to this subpart already has its own ENS telephone service or is using a third-party ENS telephone service on the effective date of this subpart, and that telephone service does not conform to the requirements in § 234.303 or § 234.307, respectively, the railroad shall comply with § 234.303 or § 234.307, respectively, no later than six months after the effective date of this subpart.

(c)(1) If a railroad subject to this subpart already has ENS signs in place on the effective date of this subpart and those signs do not conform to the requirements in § 234.309, subject to § 234.317(c)(2), the railroad's ENS signs shall conform to § 234.309 no later than five years after the effective date of this subpart. If the railroad replaces a non-conforming sign before the expiration of the five-year period, the railroad shall replace that sign with a sign that conforms to § 234.309.

(2) If a railroad subject to this subpart already has ENS signs in place on the effective date of this subpart and those signs measure less than 60 square inches, those ENS signs shall conform to § 234.309 no later than 18 months after the effective date of this subpart. If the railroad replaces a non-conforming sign before the expiration of the 18-month period, the railroad shall replace that sign with a sign that conforms to § 234.309.

(d) If a railroad subject to this subpart already has ENS signs in place on the effective date of this subpart and the placement of those signs does not conform to the requirements in § 234.311, the placement of the railroad's ENS signs shall conform to § 234.311 no later than five years after the effective date of this subpart. If a railroad replaces a sign before the five-year period so that the sign conforms with § 234.309, and the placement of that sign does not conform with § 234.311, the railroad shall also change the placement of the sign so that it conforms to § 234.311.

(e) If a railroad subject to this subpart already conducts recordkeeping as part of its ENS on the effective date of this subpart and that recordkeeping does not conform to § 234.313 or § 234.315, the railroad's recordkeeping shall conform to § 234.313 or § 234.315 no later than six months after the effective date of this subpart.

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

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2011–4759 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 76, No. 43
Friday, March 4, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–NOP–11–0014; NOP–11–05]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are Tuesday, April 26, 2011, 8 a.m. to 5:30 p.m.; Wednesday, April 27, 2011, 8 a.m. to 5 p.m.; Thursday, April 28, 2011, 8 a.m. to 5 p.m.; and Friday, April 29, 2011, 8 a.m. to 4:45 p.m. Pre-registration requests for public comments at the meeting are due by midnight Eastern Time on Sunday, April 10, 2011. Written comments received after April 10, 2011 may not be reviewed by the NOSB before the meeting.

ADDRESSES: The meeting will take place at the Red Lion Hotel on Fifth Avenue, 1415 5th Avenue, Seattle, WA 98101.

- View NOSB meeting agenda and draft recommendations at *http://www.ams.usda.gov/nop.* Requests for copies of these materials may be sent to Ms. Katherine Benham or Patricia Atkins, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; *nosb@ams.usda.gov.*
- Submit written comments at *http://www.ams.usda.gov/nosbseattle.* Comments received after April 10, 2011 may not be reviewed by the NOSB before the meeting. Written comments may also be submitted via mail to Ms. Patricia Atkins, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268. It is our intention to have all comments—whether they are submitted by mail or the Internet—available for viewing at *http://www.ams.usda.gov/nosbseattle.*
- Pre-register for a five-minute public comment slot at the meeting at *http://www.ams.usda.gov/nosbseattleslots* or by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Benham or Patricia Atkins, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; *nosb@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six subcommittees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the NOP to the Secretary of Agriculture. Since that time, the NOSB has submitted 239 addenda to its recommendations and reviewed more than 361 substances for inclusion on the National List of Allowed and Prohibited Substances. The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000, (65 FR 80548). The rule became effective April 21, 2001.

In addition, the OFPA authorizes the National List of Allowed and Prohibited Substances and provides that no allowed or prohibited substance would remain on the National List for a period exceeding five years unless the exemption or prohibition is reviewed and recommended for renewal by the NOSB and adopted by the Secretary of Agriculture. This expiration is commonly referred to as sunset of the National List. The National List appears at 7 CFR part 205, subpart G.

The principal purpose of NOSB meetings is to provide an opportunity for the organic community to weigh in on proposed NOSB recommendations and discussion items. These meetings also allow the NOSB to receive updates from the USDA/NOP on issues pertaining to organic agriculture.

Summary of October 2010 Meeting

At the fall 2010 meeting in Madison, Wisconsin, the NOSB voted to renew 56 materials listings that were scheduled to sunset in 2012 (see Table 1). A combined 28 substances were deferred by the Crops and Handling Committees until the Spring 2011 NOSB meeting in Seattle, Washington.

TABLE 1—SUNSET 2012 MATERIAL LISTINGS VOTED TO BE RELISTED AT OCTOBER 2010 MEETING

Section	Material	Expiration date
§ 205.601 Synthetic substances allowed for use in organic crop production.	EPA List 4–Inerts of Minimal Concern	October 21, 2012.
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.	None	

TABLE 1—SUNSET 2012 MATERIAL LISTINGS VOTED TO BE RELISTED AT OCTOBER 2010 MEETING—Continued

Section	Material	Expiration date
§ 205.603 Synthetic substances allowed for use in organic livestock production.	Ethanol	October 21, 2012.
	Isopropanol	October 21, 2012.
	Aspirin	October 21, 2012.
	Calcium hypochlorite	October 21, 2012.
	Chlorine dioxide	October 21, 2012.
	Sodium hypochlorite	October 21, 2012.
	Furosemide	December 13, 2012.
	Glucose	October 21, 2012.
	Glycerine	October 21, 2012.
	Magnesium sulfate	October 21, 2012.
	Copper sulfate	October 21, 2012.
	EPA List 4–Inerts of Minimal Concern	October 21, 2012.
§ 205.604 Nonsynthetic substances prohibited for use in organic livestock production.	None	
§ 205.605(a) Nonsynthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic.	Flavors	October 21, 2012.
	Magnesium sulfate	October 21, 2012.
	Yeast autolysate	October 21, 2012.
	Bakers yeast	October 21, 2012.
	Brewers yeast	October 21, 2012.
	Nutritional yeast	October 21, 2012.
	Smoked yeast	October 21, 2012.
§ 205.605(b) Synthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic."	Calcium hypochlorite	October 21, 2012.
	Chlorine dioxide	October 21, 2012.
	Sodium hypochlorite	October 21, 2012.
	Ferrous sulfate	October 21, 2012.
	Pectin (low-methoxy)	October 21, 2012.
	Phosphoric acid	October 21, 2012.
	Silicon dioxide	October 21, 2012.
	Sodium citrate	October 21, 2012.
	Sodium hydroxide	October 21, 2012.
	Sodium phosphates	October 21, 2012.
	Sulfur dioxide	October 21, 2012.
§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."	Annatto extract color (pigment CAS # 1393–63–1)—water and oil soluble.	June 27, 2012.
	Beet juice extract color (pigment CAS # 7659–95–2)	June 27, 2012.
	Beta-carotene extract color from carrots (CAS # 1393–63–1).	June 27, 2012.
	Black currant juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Black/purple carrot juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Blueberry juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Carrot juice color (pigment CAS # 1393–63–1)	June 27, 2012.
	Cherry juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Chokeberry—Aronia juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Elderberry juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Grape juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Grape skin extract color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Paprika color—dried powder and vegetable oil extract (CAS # 68917–78–2).	June 27, 2012.
	Pumpkin juice color (pigment CAS # 127–40–2)	June 27, 2012.
	Purple potato juice color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3),.	June 27, 2012.
	Red cabbage extract color (pigment CAS #'s: 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.

TABLE 1—SUNSET 2012 MATERIAL LISTINGS VOTED TO BE RELISTED AT OCTOBER 2010 MEETING—Continued

Section	Material	Expiration date
	Red radish extract color (pigment CAS #'s 528–58–5, 528–53–0, 643–84–5, 134–01–0, 1429–30–7, and 134–04–3).	June 27, 2012.
	Saffron extract color (pigment CAS # 1393–63–1)	June 27, 2012.
	Turmeric extract color (CAS # 458–37–7)	June 27, 2012.
	Fructo-oligosaccharides (CAS#308066–66–2)	June 27, 2012.
	Hops (humulus lupulus)	June 27, 2012.
	Inulin, oligofructose enriched (CAS # 9005–80–5)	June 27, 2012.
	Pectin (high-methoxy)	October 21, 2012.
	Cornstarch (native)	October 21, 2012.
	Whey protein	June 27, 2012.

The NOSB also voted against listing three materials petitioned for use in organic crop production: ethylene glycol, tall oils, and tetramethyl-decynediol. The NOSB voted to list formic acid on § 205.603 as a parasiticide for use in honeybee hives. Additionally, the board voted to reaffirm their prior Sunset 2012 recommendations from the April 2010 meeting.

In addition to their review of materials, the NOSB also passed multiple recommendations that would: define organic apiculture standards, clarify § 205.238(c)(2) to promote the humane treatment of animals during routine care, define engineered nanomaterials and prohibit their use in organic agriculture, and clarify § 205.101(b) to reduce mislabeling in the organic marketplace. The NOSB also voted to update their New Member Guide and three sections of their Policy and Procedures Manual: Section IV, establishing ad-hoc committees; Section V, outlining the scope of NOP/NOSB Collaboration; and Section VII, allowing annotation changes during Sunset Review under certain circumstances.

Spring 2011 Meeting Agenda Items

The Crops Committee will present recommendations on the remaining 22 material listings scheduled to sunset in 2012 (see Table 2). The Crops Committee will also present recommendations to the board on two petitioned materials: nickel and tetracycline. Other Crops Committee recommendations include a recommendation on the classification of corn steep liquor and a response to the National Organic Program's request on sodium nitrate.

TABLE 2—CROPS SUBSTANCES SCHEDULED TO SUNSET IN 2012 AND BE ADDRESSED AT SPRING MEETING

Section	Material	Expiration date
§ 205.601 Synthetic substances allowed for use in organic crop production.	Ethanol	October 21, 2012.
	Isopropanol	October 21, 2012.
	Newspapers or other recycled paper, without glossy or colored inks	October 21, 2012.
	Plastic mulch and covers	October 21, 2012.
	Newspapers or other recycled paper, without glossy or colored inks	October 21, 2012.
	Pheromones	October 21, 2012.
	Sulfur dioxide	October 21, 2012.
	Vitamin D_3	October 21, 2012.
	Streptomycin	October 21, 2012.
	Lignin sulfonate	October 21, 2012.
	Magnesium sulfate	October 21, 2012.
	Ethylene gas	October 21, 2012.
	Lignin sulfonate	October 21, 2012.
	Sodium silicate	October 21, 2012.
	Calcium hypochlorite	October 21, 2012.
	Chlorine dioxide	October 21, 2012.
	Sodium hypochlorite	October 21, 2012.
	Copper hydroxide	October 21, 2012.
	Copper oxide	October 21, 2012.
	Copper oxychloride	October 21, 2012.
	Copper sulfate	October 21, 2012.
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.	Sodium nitrate	October 21, 2012.

The Livestock Committee will present two recommendations on animal welfare: Stocking rates and animal handling, transit, and slaughter. They will also have a discussion document on omnivorous diets for poultry.

The Handling Committee will present recommendations on the remaining six material listings scheduled to sunset in 2012 (see Table 3). The Handling Committee will also present recommendations to the board on four petitioned materials: attapulgite, calcium acid pyrophosphate, silicon dioxide, and sodium acid pyrophosphate. Other Handling Committee recommendations include a recommendation on nutrient vitamins and minerals and amending the chlorine materials annotation.

TABLE 3—HANDLING SUBSTANCES SCHEDULED TO SUNSET IN 2012 AND BE ADDRESSED AT SPRING MEETING

Section	Material	Expiration date
§ 205.605(a) Nonsynthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic."	Enzymes	October 21, 2012.
	Potassium iodide	October 21, 2012.
§ 205.605(b) Synthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic."	Nutrient vitamins	October 21, 2012.
	Nutrient minerals	October 21, 2012.
	Potassium iodide	October 21, 2012.
	Tocopherols	October 21, 2012.

The Materials Committee will present a guidance document on materials classification.

The Compliance, Accreditation, and Certification Committee will present a discussion document on the evaluation of material review organizations.

The Policy Development Committee will present recommendations on three sections of the NOSB Policy and Procedures Manual: Sections III & IV: Review of Vice Chair & Policy Development Committee Roles; Section IV: Clarification of Committee Purview; and Section V: NOSB Member and Leadership Transition.

The Meeting Is Open to the Public. The NOSB has scheduled time for public input for Tuesday, April 26, 2011, from 10 a.m. to 5:30 p.m. and Thursday, April 28, 2011 from 8 a.m. to 5 p.m. Individuals and organizations wishing to make oral presentations at the meeting are requested to reserve a slot electronically via *http://www.ams.usda.gov/nosbseattleslots* or by calling (202) 720–3252. Individuals or organizations will be given one five-minute slot to present their views. All persons making oral presentations are requested to provide their comments in writing and indicate the topic of their comment, referencing specific NOSB recommendations/topics or noting if they plan to cover multiple topics. Written submissions may contain information other than that presented at the oral presentation. Anyone may submit written comments at the meeting. Persons submitting written comments are asked to provide sixteen copies.

Interested persons may visit *http://www.ams.usda.gov* to view available meeting documents prior to the meeting and submit and/or view comments.

Dated: February 25, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–4809 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Local and Regional Food Aid Procurement Projects

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Foreign Agricultural Service (FAS), on behalf of the Commodity Credit Corporation (CCC), has closed the application period for field-based projects under the USDA Local and Regional Food Aid Procurement Pilot Project (USDA LRP Project). All available funding for field-based projects has been allocated.

DATES: Effective March 4, 2011.

FOR FURTHER INFORMATION CONTACT: Jamie Fisher, Chief, Local and Regional Procurement, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, 1400 Independence Avenue, SW., Washington, DC 20250–1034; or by phone (202) 720–5620; or by fax: (202) 690–0251; or by e-mail: *LRP@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) directed the Secretary of Agriculture (the Secretary) to implement a local and regional food aid procurement pilot project in developing countries. The Secretary was directed to use CCC funds in the following amounts to carry out the pilot project:

- $5 million for fiscal year 2009;
- $25 million for fiscal year 2010;
- $25 million for fiscal year 2011; and
- $5 million for fiscal year 2012.

The USDA LRP Project Interim Guidelines provide that FAS will accept applications for funding until June 1, 2011 unless FAS publishes a notice in the **Federal Register** to close or extend the application period. FAS has allocated all available funding for field-based projects, and therefore, by this notice, is closing the application period.

Dated: February 11, 2011.

John D. Brewer,

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

[FR Doc. 2011–4872 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

MedBow-Routt Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The MedBow-Routt Resource Advisory Committee will meet in Walden, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review new project proposals and update RAC members on the progress of previously approved projects.

DATES: The meeting will be held March 24, 2011 from 9:30 a.m.–3:30 p.m.

ADDRESSES: The meeting will be held at Parks Ranger District, 100 Main Street, Walden, Colorado. Written comments should be sent to Phil Cruz, RAC DFO, 2468 Jackson Street, Laramie, Wyoming 82070. Comments may also be sent via e-mail to *pcruz@fs.fed.us,* or via facsimile to 307–745–2467.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office, 2468 Jackson Street, Laramie, Wyoming.

FOR FURTHER INFORMATION CONTACT: Diann Ritschard, RAC Coordinator, 925 Weiss Drive, Steamboat Springs, CO 80487, 970–870–2187, *dritschard@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review of the status of approved projects; discussion of travel reimbursement, review and discussion of new project proposal and public forum discussion. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 17, 2011 will have the opportunity to address the Committee at those sessions.

Dated: February 25, 2011.

Phil Cruz,

Forest Supervisor.

[FR Doc. 2011–4830 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Manti-La Sal National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Manti-La Sal National Forest Resource Advisory Committee will meet in Price, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to consider Secure Rural Schools Act Title II project proposals and hear oral presentations.

DATES: The meeting will be held March 30, 2011, and will begin at 9 a.m.

ADDRESSES: The meeting will be held in the conference room of the Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah. Written comments should be sent to Rosann Fillmore, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Comments may also be sent via e-mail to *rdfillmore@fs.fed.us* or via facsimile to 435–637–4940.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Visitors are encouraged to call ahead to 435–636–3525 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rosann Fillmore, RAC coordinator, USDA, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501; 435–636–3525; E-mail *rdfillmore@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Consideration of Project Funding Proposals. (2) Oral presentations from proponents. (3) Other business. (4) Public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 25, 2011 will have the opportunity to address the Committee at those sessions.

Dated: February 28, 2011.

Ann King,

Acting Forest Supervisor.

[FR Doc. 2011–4961 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Delta-Bienville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Delta-Bienville Resource Advisory Committee will meet in Forest, Mississippi. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on March 14, 2011, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Bienville Ranger District Work Center, Hwy 501 South, 935A South Raleigh St, Forest, Mississippi 39074. Written comments should be sent to Michael T. Esters, Bienville Ranger District Office, 3473 Hwy 35 South, Forest, Mississippi 39074. Comments may also be sent via e-mail to *mesters@fs.fed.us,* or via facsimile to 601 469–2513.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bienville Ranger District Office, 3473 Hwy 35 South, Forest, Mississippi 39074. Visitors are encouraged to call ahead to 601 469–3811 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nefisia Kittrell, RAC coordinator, USDA, Bienville Ranger District Office, 3473 Hwy 35 South, Forest, Mississippi; (601) 469–3811; E-mail *nkittrell@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review project proposals and recommendations. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: February 28, 2011.

Michael T. Esters,

Designated Federal Officer.

[FR Doc. 2011–4949 Filed 3–3–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) announces the availability of $25 million in funding for Fiscal Year (FY) 2011 for the Community Connect Grant Program. This funding represents carry over balances from prior Appropriations Acts. This notice is being issued prior to passage of a final Appropriations Act for FY 2011, to allow potential applicants time to submit proposals and give the Agency time to process applications within the current fiscal year. RUS will publish a subsequent notice identifying the amount received in the final Appropriations Act, if any. Expenses incurred in developing

applications will be at the applicant's risk. For FY 2010, Congress appropriated approximately $17.9 million. In addition, RUS announces the minimum and maximum amounts for Community Connect grants applicable for the fiscal year. The Community Connect Grant Program regulations can be found at 7 CFR part 1739, subpart A.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping *no later* than May 3, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.
- Electronic copies must be received by May 3, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

ADDRESSES: You may obtain application guides and materials for the Community Connect Grant Program via the Internet at the following Web site: *http://www.rurdev.usda.gov/utp_commconnect.html.* You may also request application guides and materials from RUS by contacting the appropriate individual listed in section VII of the **SUPPLEMENTARY INFORMATION** section of this notice.

Submit completed paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2870, STOP 1599, Washington, DC 20250–1599. Applications should be marked "Attention: Director, Broadband Division, Rural Utilities Service."

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 690–4673, fax: (202) 690–4389.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.863.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than May 3, 2011, to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.
- Electronic copies must be received by May 3, 2011, to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

Items in Supplementary Information

I. Funding Opportunity

The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide currently unserved areas, on a "community-oriented connectivity" basis, with broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. Rural Utilities Service will give priority to rural areas that it believes have the greatest need for broadband transmission services, based on the criteria contained herein.

Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a "community-oriented connectivity" basis. The "community-oriented connectivity" concept will stimulate practical, everyday uses and applications of broadband facilities by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals. Please see 7 CFR part 1739, subpart A for specifics.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003. This Notice does not change the Community Connect Grant Program regulation (7 CFR 1739, subpart A).

II. Award Information

A. Available Funds

1. *General.* The Administrator has determined that the following amounts are available for grants in FY 2011 under 7 CFR 1739.2(a).

2. *Grants*

a. $25 million is available for grants from prior year appropriations. Under 7 CFR 1739.2, the Administrator has established a minimum grant amount of $50,000 and a maximum grant amount of $1,500,000 for FY 2011.

b. Assistance instrument: Rural Development will execute grant documents appropriate to the project prior to any advance of funds with successful applicants. B. Community Connect grants cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. *Who is eligible for grants?* (See 7 CFR 1739.10.)

1. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

a. An incorporated organization,

b. An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b(b) and (c),

c. A State or local unit of government,

d. A cooperative, private corporation or limited liability company organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for Community Connect Grant Program financial assistance directly.

3. Applicants must have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions. Please see 7 CFR 1739.14 for the requirement. Grant applicants must

demonstrate a matching contribution, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions must be used for eligible purposes of Community Connect grant assistance (*see* 7 CFR 1739.12).

2. To be eligible for a grant, the Project must (*see* 7 CFR 1739.11):

a. Serve a Rural Area where Broadband Transmission Service does not currently exist, to be verified by Rural Development prior to the award of the grant;

b. Serve one Community recognized in the latest U.S. Census or the most recent edition of the Rand McNally Atlas containing population data;

c. Deploy Basic Broadband Transmission Service, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

d. Offer Basic Broadband Transmission Service to residential and business customers within the proposed Service Area; and

e. Provide a Community Center with at least ten (10) Computer Access Points within the proposed Service Area, and make Broadband Transmission Service available therein, free of all charges to users for at least 2 years.

C. See paragraph IV.B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1739.15 for completed grant application items.

IV. Application and Submission Information

A. Clarifications to Requirements for FY 2011

1. Although 7 CFR 1739.3 defines Broadband Transmission Service as 200 kilobits/second both in the downstream and upstream directions, the Agency recognizes that these speeds are not adequate to deliver much needed benefits such as distance learning and telemedicine to communities that are not currently receiving broadband service. Therefore, when the applications are scored for the "community-oriented connectivity benefits derived from the proposed services" emphasis will be placed on the amount of bandwidth that is being delivered to the customer. Although the amount of bandwidth is not the only item that will be evaluated for this criteria, the bandwidth being provided to enhance rural economic development will have a direct impact on the score that is assigned. All applicants are encouraged to construct systems that are capable of delivering the broadband speeds that are identified in the Federal Communications Commission's National Broadband Plan.

2. When determining the points that will be awarded for the "community-oriented connectivity" benefits derived from the proposed service, systems that are proposing to deliver more than the minimum bandwidth requirements have a greater potential of receiving the maximum number of points for this category.

3. When determining if a community has no existing broadband service, applicants are encouraged to refer to the Federal Communication Commission's National Broadband Map.

4. Rural Development clarifies that the definition of "Critical Community Facilities" includes the mandatory Community Center.

5. For all funding commitments, including all matching fund commitments and commitments made by the applicant, that are required to complete the Project in addition to the Rural Development grant, evidence must be submitted demonstrating that funding arrangements have been obtained. If the appropriate funding commitments are not included in the application, the application will be deemed ineligible for consideration. This evidence must:

a. Clearly state the name of the entity that is making the commitment;

b. Include the amount of the commitment; and

c. State the purpose of commitment.

6. Rural Development clarifies that in order to qualify as eligible costs for grant coverage or matching fund contributions, operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction must be for the following purposes subject to the specified maximum amounts:

a. Salary for operations manager, not to exceed $30,000 per year.

b. Salary for technical support staff, not to exceed $30,000 per year.

c. Salary for community center staff, not to exceed $25,000 per year.

d. Bandwidth expenses, not to exceed $25,000 per year.

e. Training courses on the use of the Internet, not to exceed $15,000 per year.

The operating costs to be funded by the grant or used as matching contributions cannot exceed in the aggregate $250,000. No other operating expenses are eligible for grant funding or to be considered as matching funds. The period for expenses to be considered eligible for grant funding or to be used as an in-kind match is three years from the date the Administrator signs the award documents.

7. Community means any incorporated or unincorporated town, village, or borough located in a Rural Area, that is recognized in the latest decennial census as published by the Bureau of the Census or in the most recent edition of a Rand McNally Atlas containing population data.

8. Rural Development clarifies that the economic need of the applicant's service territory will be based on the median household income (MHI) for the Community serviced and the state in which the Community is located, as determined by the U.S. Bureau of the Census at *http://factfinder.census.gov*. If the community was qualified using the Rand McNally Atlas, the applicant must use the MHI, contained in the latest decennial census, of the county in which the Community resides as the Community MHI.

B. Where To Get Application Information

The application guide, copies of necessary forms and samples, and the Community Connect Grant Program regulation are available from these sources:

1. The Internet: *http://www.rurdev.usda.gov/utp_commconnect.html*.

2. The Rural Development Broadband Division, for paper copies of these materials: (202) 690–4673.

C. What constitutes a completed application?

1. Detailed information on each item required can be found in the Community Connect Grant Program regulation and the Community Connect Grant Program application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of Community Connect Grant Program financial assistance specified in the Community Connect Grant Program regulation. The Community Connect Grant Program regulation and the application guide provide specific guidance on each of the items listed and the Community Connect Grant Program application guide provides all necessary forms and sample worksheets.

2. Applications should be prepared in conformance with the provisions in 7 CFR 1739, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the Rural Development Application Guide for this program containing instructions and all necessary forms, as

well as other important information, in preparing their application. Completed applications must include the following:

a. *An Application for Federal Assistance.* A completed Standard Form (SF) 424.

b. *An executive summary of the Project.* The applicant must provide Rural Development with a general project overview.

c. *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed 7 CFR 1739.17.

d. *System design.* The applicant must submit a system design, including, narrative specifics of the proposal, associated costs, maps, engineering design studies, technical specifications and system capabilities, etc.

e. *Scope of work.* The scope of work must include specific activities and services to be performed under the proposal, who will carry out the activities and services, specific time-frames for completion, and a budget for all capital and administrative expenditures reflecting the line item costs for all grant purposes, the matching contribution, and other sources of funds necessary to complete the project.

f. *Community-Oriented Connectivity Plan.* The applicant must provide a detailed Community-Oriented Connectivity Plan.

g. *Financial information and sustainability.* The applicant must provide financial statements and information and a narrative description demonstrating the sustainability of the Project.

h. *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

i. *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and to perform the activities proposed under the grant application.

j. *Funding commitment from other sources.* If the Project requires additional funding from other sources in addition to the Rural Development grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

k. *DUNS Number.*

As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see *http://www.grants.gov/applicants/request_duns_number.jsp* for more information on how to obtain a DUNS number or how to verify your organization's number.

l. *Central Contractor Registration (CCR).*

(a) In accordance with 2 CFR part 25, applicants, whether applying electronically or by paper, must be registered in the CCR prior to submitting an application. Applicants may register for the CCR at *https://www.uscontractorregistration.com/* or by calling 1–877–252–2700. Completing the CCR registration process takes up to five business days, and applicants are strongly encouraged to begin the process well in advance of the deadline specified in this notice.

(b) The CCR registration must remain active, with current information, at all times during which an entity has an application under consideration by an agency or has an active Federal Award. To remain registered in the CCR database after the initial registration, the applicant is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the CCR database to ensure it is current, accurate and complete.

m. *Compliance with other federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(i) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(ii) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(iii) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(iv) 7 CFR part 3018—New Restrictions on Lobbying.

(v) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(vi) Certification regarding Architectural Barriers.

(vii) Certification regarding Flood Hazard Precautions.

(viii) An environmental report, in accordance with 7 CFR 1794.

(ix) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Transmission Service.

(x) Federal Obligation Certification on Delinquent Debt.

D. How many copies of an application are required?

1. Applications submitted on paper: Submit the original application and two (2) copies to Rural Development.

2. Electronically submitted applications: The additional paper copies are not necessary if you submit the application electronically through Grants.gov.

E. How and Where To Submit an Application

Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2868, STOP 1599, Washington, DC 20250–1599. Applications should be marked "Attention: Director, Broadband Division, Rural Utilities Service."

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. Rural Development encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

(a) Applicant may file an electronic application at *http://www.grants.gov.* Applications will not be accepted via facsimile machine transmission or electronic mail. Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application. If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the Grants.gov Web site.

(b) First time Grants.gov users should go to the "Get Started" tab on the Grants.gov site and carefully read and follow the steps listed. These steps need to be initiated early in the application process to avoid delays in submitting your application online.

(c) Registering with the Central Contractor Registry (CCR), will take some time to complete, so keep that in mind when beginning the application process. In order to register with the CCR, your organization will need a Data Universal Numbering System (DUNS) Number.

F. Deadlines

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than May 3, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

2. Electronic grant applications must be received by May 3, 2011 to be eligible for FY 2011 funding. Late applications are not eligible for FY 2011 grant funding.

G. Funding Restrictions

1. *Eligible grant purposes.* Grant funds may be used to finance:

a. The construction, acquisition, or leasing of facilities, including spectrum, to deploy Broadband Transmission Service to all participating Critical Community Facilities and all required facilities needed to offer such service to residential and business customers located within the proposed Service Area;

b. The improvement, expansion, construction, or acquisition of a Community Center that furnishes free access to broadband Internet service, provided that the Community Center is open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of five percent (5%) of the grant amount requested or $100,000;

c. End-User Equipment needed to carry out the Project;

d. Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction; and

e. The purchase of land, buildings, or building construction needed to carry out the Project.

2. *Ineligible grant purposes.*

a. Grant funds may not be used to finance the duplication of any existing Broadband Transmission Service provided by another entity.

b. Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such service.

3. Please see 7 CFR 1739.3 for definitions, 7 CFR 1739.12 for eligible grant purposes, and 7 CFR 1739.13 for ineligible grant purposes.

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 100) See 7 CFR 1739.17 for the items that will be reviewed during scoring and for scoring criteria.

a. The rurality of the Project (up to 40 points);

b. The economic need of the Project's Service Area (up to 30 points); and

c. The "community-oriented connectivity" benefits derived from the proposed service (up to 30 points).

B. Review Standards

1. All applications for grants must be delivered to Rural Utilities Service at the address and by the date specified in this notice (*see* also 7 CFR 1739.2) to be eligible for funding. Rural Utilities Service will review each application for conformance with the provisions of this part. Rural Utilities Service may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

3. Applications conforming with this part will then be evaluated competitively by a panel of Rural Utilities Service employees selected by the Administrator of Rural Utilities Service, and will be awarded points as described in the scoring criteria in 7 CFR 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

4. Regardless of the score an application receives, if Rural Development determines that the Project is technically or financially infeasible, Rural Development will notify the applicant, in writing, and the application will be returned with no further action.

C. Selection Process

Grant applications are ranked by final score. Rural Development selects applications based on those rankings, subject to the availability of funds.

VI. Award Administration Information

A. Award Notices

Rural Utilities Service recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. Rural Utilities Service generally notifies applicants whose projects are selected for awards by faxing an award letter. Rural Utilities Service follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements

The items listed in paragraph IV.B.2.k of this notice, and the Community Connect Grant Program regulation, application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. *Performance reporting.* All recipients of Community Connect Grant Program financial assistance must provide annual performance activity reports to Rural Development until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project. See 7 CFR 1739.19.

2. *Financial reporting.* All recipients of Community Connect Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please see 7 CFR 1739.20.

3. *Recipient and Subrecipient Reporting.* The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR Part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

b. The Total Compensation of the Recipient's Executives (5 most highly

compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR Part 170) to *http://www.ccr.gov* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the subaward was made.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/commconnect.htm.* This Web site maintains up-to-date resources and contact information for the Community Connect Grant Program.

B. Phone: 202–690–4673

C. Fax: 202–690–4389

D. Main point of contact: Kenneth Kuchno, Director, Broadband Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: February 18, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–4751 Filed 3–3–11; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing cancellation.

SUMMARY: On December 8, 2010 (75 FR 76396), the U.S. Commission on Civil Rights announced a briefing to be held on Friday, March 11, 2011 at the Commission's headquarters. On March 1, 2011, the Commission cancelled the briefing. The details of the cancelled meeting are:

DATE AND TIME: Friday, March 11, 2011; 9:30 a.m. EST.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Briefing Agenda

This briefing is open to the public.

Topic: The Civil Rights Implications of Eminent Domain Abuse.

I. Introductory Remarks by Chairman;
II. Speakers' Presentations;
III. Questions by Commissioners and Staff Director;
IV. Adjourn Briefing.

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 1, 2011.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2011–4910 Filed 3–2–11; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–2011]

Foreign-Trade Zone 230–Greensboro, NC; Application for Subzone; VF Jeanswear (Apparel Distribution); Mocksville, NC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Piedmont Triad Partnership, grantee of FTZ 230, requesting special-purpose subzone status for the warehousing and distribution facility of VF Jeanswear, located in Mocksville, North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 1, 2011.

The VF Jeanswear facility (430 employees, 71.67acres/494,000 square feet of enclosed space) is located at 1401 U.S. Highway 601 South, Mocksville, North Carolina. The facility is used for warehousing and distribution of foreign-origin apparel (duty rates 16.6%–28.6%) for the U.S. market and export. The applicant is not seeking manufacturing or processing authority with this request.

FTZ procedures could exempt VF Jeanswear from customs duty payments on foreign apparel that is exported (about 1% of shipments). On domestic sales, duty payments would be deferred until the foreign merchandise is shipped from the facility and entered for U.S. consumption. FTZ designation would further allow VF Jeanswear to realize logistical benefits through the use of certain customs procedures. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 3, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 18, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: March 1, 2011.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2011–4960 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 147—Berks County, PA; Site Renumbering Notice; Correction

The **Federal Register** notice (76 FR 1134, 1/7/11) describing the renumbering of sites within Foreign-Trade Zone 147 in Berks County, Pennsylvania, should be as follows:

FTZ 147 currently consists of 19 "sites" totaling 5,038 acres in the Reading area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 147 will be as follows: *Site 1* (865 acres)—Reading Municipal Airport complex; *Site 2* (6.64 acres)—Second Street and Grand Street, Hamburg; *Site 3* (160.71 acres)—Excelsior Industrial Park, Maiden Creek Township; *Site 4* (272.33 acres total)—within the International Trade District of York located at East Berlin and Zarfoss Roads (26.64 acres), at 500 Lincoln Street and 160 & 222 N. Hartley Street (16.69 acres), at the Industrial Plaza of York, Roosevelt Avenue and West Philadelphia Street (1 acre), and at 260

Hidden Lane (228 acres); *Site 5* (54.42 acres total)—within the Penn Township Industrial Park located at 762 Wilson Avenue in York (10.55 acres), at 14 Barnhart Drive in York (9.82 acres), at 16 Barnhart Drive in York (2.36 acres), at 26 and 29 Barnhart Drive in Hanover (23.06 acres), and at PTIP Lots 32, 34, 37 and 38 (8.63 acres); *Site 7* (155 acres)—Greenspring Industrial Park, 305 Green Springs Road, York County; *Site 8* (152 acres)—Fairview Business Park located at McCarthy Drive and Industrial Drive in York County; *Site 9* (34 acres)—located at 900 Kriner Road in Chambersburg; *Site 10* (1,214 acres)—Cumberland Valley Business Park (formerly Letterkenny Army Depot), 5121A Coffey Avenue, Franklin County; *Site 11* (310 acres)—ProLogis Park 81, Interstate 81 and Walnut Bottom Road, Cumberland County; *Site 12* (242 acres)—LogistiCenter, Allen Road Extension and Distribution Drive, Carlisle; *Site 13* (100 acres total)—within the Capital Business Center in Middletown located at 400 First Street (11 acres), at 401 First Street (33 acres), 400 First Street Expressway (16 acres), at 500 Industrial Lane (8 acres), at 600 Hunter Lane (15 acres), and at 300 Hunter Lane (17 acres); *Site 14* (164 acres)—Conewago Industrial Park, 1100 Zeager Road, Elizabethtown; *Site 16* (134 acres, sunset 5/31/2014)—Matrix Development Group, 1201 South Antrim Way, Greencastle; *Site 17* (256 acres, sunset 5/31/2014)—United Business Park, 7810 Olde Scotland Road, Shippensburg; *Site 18* (208 acres, sunset 5/31/2014)—Key Logistics Park, Centerville Road, Newville; *Site 19* (292 acres, sunset 5/31/2014)—I–81 Commerce Park, Walnut Bottom Road, Shippensburg; *Site 20* (14.5 acres)—GlaxoSmithKline, 105 Willow Springs Lane, York; *Site 21* (4.4 acres)—Southern Cross Logistics, Inc., 2800 Concord Road, Suite A, York; *Site 22* (214 acres)—Caterpillar Logistics, 600 & 601 Memory Lane, York; *Site 23* (9.17 acres)—D&D Distribution Services, 789 Kings Mill Road, York; *Site 24* (24 acres)—401 Moulstown Road, Penn Township; *Site 25* (1 acre)—633–641 Lowther Road in Lewisberry; and, *Site 26* (151 acres total)—two parcels in Guilford Township located at WEN Drive and Guilford Springs Road (121 acres) and at Guilford Springs Road (30 acres). (**Note:** Site 6 was deleted through an administrative action; and, Site 15 was transferred to another zone project via Board Order 1502.)

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: February 28, 2011.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2011–4956 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; William Chi-Wai Tsu And Cheerway Corporation; Order Denying Export Privileges

In the Matter of:
William Chi-Wai Tsu, currently incarcerated at: Register Number 34009–112, USP Florence ADMAX, U.S. Penitentiary, P.O. Box 8500, Florence, CO 81226;
and with an address at:
1432 Forest Glen Drive, Unit #65, Hacienda Heights, CA 91745;
Respondent;
Cheerway Corporation, 1641 W. Main Street, Suite 308, Alhambra, CA 91801;
and with an address at:
1432 Forest Glenn Drive, Unit #65, Hacienda Heights, CA 91745;
Related Person.

A. Denial of Export Privileges of William Chi-Wai Tsu

On August 3, 2009, in the U.S. District Court for the Central District of California, William Chi-Wai Tsu ("Tsu") pled guilty to, and was convicted of, violating two counts of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) ("IEEPA"). Specifically, Tsu pled guilty to knowingly and willfully exporting and causing to be exported from the United States to the People's Republic of China Triquint Semiconductor integrated circuits classified as Export Control Classification Number 3A001 without first obtaining from the U.S. Department of Commerce a license or written authorization for such export, knowing such a license or authorization was required. Tsu was sentenced to 40 months of imprisonment and three years of supervised release.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations") [1] provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act ("EAA")], the EAR, of any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. section 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. section 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Tsu's conviction for violating the IEEPA, and have provided notice and an opportunity for Tsu to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Tsu. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Tsu's export privileges under the Regulations for a period of 10 years from the date of Tsu's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Tsu had an interest at the time of his conviction.

B. Denial of Export Privileges of Related Person

Pursuant to Sections 766.25(h) and 766.23 of the Regulations, the Director of BIS's Office of Exporter Services, in consultation with the Director of BIS's Office of Export Enforcement, may take action to name persons related to a Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of a denial order. Because Tsu is the vice president of Cheerway Corporation ("Cheerway"), Cheerway is related to Tsu by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. BIS believes that naming Cheerway as a related person to Tsu is

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2010). The Regulations issued pursuant to the EAA (50 U.S.C. app. sections 2401–2420 (2000)). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010 (75 FR 50681, August 16, 2010), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

necessary to avoid evasion of the denial order against Tsu.

As provided in Section 766.23 of the Regulations, I gave notice to Cheerway that its export privileges under the Regulations could be denied for up to 10 years due to its relationship with Tsu and that BIS believes naming it as a person related to Tsu would be necessary to prevent evasion of a denial order imposed against Tsu. In providing such notice, I gave Cheerway an opportunity to oppose its addition to the Tsu Denial Order as a related party. Having received no submission, I have decided, following consultations with BIS's Office of Export Enforcement, including its Director, to name Cheerway as a Related Person to the Tsu Denial Order, thereby denying its export privileges for 10 years from the date of Tsu's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which the Related Person had an interest at the time of Tsu's conviction. The 10-year denial period will end on August 3, 2019.

Accordingly, *it is hereby ordered:*

I. Until August 3, 2019, William Chi-Wai Tsu with last known addresses at: Register Number 34009–112, USP Florence ADMAX, U.S. Penitentiary, P.O. Box 8500, Florence, CO 81226 and 1432 Forest Glen Drive, Unit #65, Hacienda Heights, CA 91745, and when acting for or on behalf of Tsu, his representatives, assigns, agents or employees (collectively referred to hereinafter as the "Denied Person"), and the following person related to the Denied Person as defined by Section 766.23 of the Regulations: Cheerway Corporation, with last known addresses at: 1641 W. Main Street, Suite 308, Alhambra, CA 91801, and 1432 Forest Glenn Drive, Unit #65, Hacienda Heights, CA 91745, and when acting for or on behalf of Cheerway, its successors or assigns, agents, or employees ("the Related Person") (together, the Denied Person and the Related Person are "Persons Subject to this Order"), 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 Regulations, or in any other activity subject to the Regulations, 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 Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject to this Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject to this Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject to this Order acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject to this Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject to this Order in the United States any item subject to the Regulations 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 Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject to this Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject to this Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Person named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, 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 if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 3, 2019.

VI. In accordance with Part 756 of the Regulations, Tsu may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. In accordance with Part 756 of the Regulations, the Related Person may also file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VIII. A copy of this Order shall be delivered to the Denied Person and the Related Person. This Order shall be published in the **Federal Register**.

Issued this 7th day of February, 2011.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2011–4819 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the 2009–2010 Antidumping Duty Administrative and New Shipper Reviews

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

DATES: *Effective Date:* March 4, 2011.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28 and 29, 2010, the Department of Commerce ("the

Department") published the initiations of the 2009–2010 administrative review and the new shipper review ("NSR") of Xinjiamei Furniture Co., Ltd. ("Xinjiamei"), respectively, of the antidumping duty order on folding metal tables and chairs from the People's Republic of China ("PRC"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224 (July 28, 2010) and *Folding Metal Tables and Chairs from the People's Republic of China: Initiation of New Shipper Review,* 75 FR 44767 (July 29, 2010). These reviews cover the period June 1, 2009, through May 31, 2010. The preliminary results of the administrative review are currently due no later than March 2, 2011.

On February 9, 2011, Xinjiamei agreed to waive the new shipper review time limits and agreed to the alignment of its NSR with the 2009–2010 administrative review. *See* Letter from Xinjiamei, regarding Waiver of the Time Limits and Request for Alignment, dated February 9, 2011. Therefore, pursuant to section 351.214(j)(3) of the Department's regulations, we have aligned the NSR of Xinjiamei with the 2009–2010 administrative review. Accordingly, the preliminary results for the NSR are also due on March 2, 2011.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review and new shipper review of folding metal tables and chairs from the PRC within this time limit. Specifically, additional time is needed to determine the appropriate surrogate country, and surrogate values with which to value factors of production. Moreover, additional time is needed in order that the Department can conduct mandatory verifications and issue verification reports prior to the preliminary results.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of these reviews, which are currently due on March 2, 2011, by 90 days. Therefore, the preliminary results for the administrative and new shipper reviews are now due no later than May 31, 2011.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 25, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4940 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Preliminary No Shipment Determination

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

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India with respect to 202 companies.[1] The respondents which the Department selected for individual examination are Apex Exports (Apex) and Falcon Marine Exports Limited (Falcon). The respondents which were not selected for individual examination are listed in the "Preliminary Results of the Review" section of this notice. This is the fifth administrative review of this order. The period of review (POR) is February 1, 2009, through January 31, 2010.

We preliminarily determine that sales made by Apex and Falcon have been made at below normal value (NV), and, therefore, are subject to antidumping duties. In addition, based on the preliminary results for the respondents selected for individual examination, we have preliminarily determined a margin for those companies that were not individually examined. Finally, we are rescinding this review with respect to Devi Sea Foods Limited (Devi) because the order with respect to shrimp produced and exported by this company was revoked effective February 1, 2009.

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* March 4, 2011.

FOR FURTHER INFORMATION CONTACT: Henry Almond or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0049, or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from India. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (Feb. 1, 2005) (*Shrimp Order*). On February 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from India for the period February 1, 2009, through January 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 5037 (Feb. 1, 2010). In response to timely requests from interested parties pursuant to 19 CFR 351.213(b)(1) and (2) to conduct an administrative review of the U.S. sales of shrimp by numerous Indian producers/exporters, the Department published a notice of initiation of administrative review for 203 companies. *See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 75 FR 17693 (Apr. 7, 2010) (*Initiation Notice*).

In the *Initiation Notice,* the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based upon CBP entry data. *See Initiation Notice,* 75 FR at 17699. In April 2010, we received comments on the issue of respondent selection from

[1] This figure does not include the company for which the Department is rescinding the administrative review.

Devi, Falcon, the Liberty Group,[2] the domestic processors,[3] and the petitioner.[4]

In April and May 2010, we received statements from 20 companies that indicated that they had no shipments of subject merchandise to the United States during the POR.

In July 2010, after considering the large number of potential exporters or producers involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Elizabeth Eastwood, Senior Analyst, Office 2, AD/CVD Operations entitled, "2009–2010 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Selection of Respondents for Individual Review," dated July 9, 2010 (Respondent Selection Memo). As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters accounting for the largest volume of shrimp from India during the POR (*i.e.,* based on CBP entry data, Devi and Falcon). Accordingly, we issued the antidumping duty questionnaire to these companies on July 9, 2010.

In July 2010, we published the final results of the 2008–2009 administrative review for this antidumping duty order, in which we revoked the *Shrimp Order* with respect to Devi's sales of subject merchandise. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813 (July 19, 2010) (*2008–2009 Indian Shrimp Final*). Accordingly, because Devi's exports of shrimp were no longer subject to this administrative review, we selected the next largest Indian shrimp exporter/producer by volume, Apex, as a mandatory respondent. We issued the antidumping duty questionnaire to Apex in this same month.

In August 2010, we received responses from Apex and Falcon to section A (*i.e.,* the section related to general information) of the questionnaire. In this same month, we also selected the United Kingdom and Japan as the appropriate third country comparison markets for Apex and Falcon, respectively. *See* the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "2009–2010 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India—Selection of the Appropriate Third Country Market for Apex Exports," dated August 19, 2010 (Apex Third Country Market Memo), and the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "2009–2010 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India—Selection of the Appropriate Third Country Market for Falcon Marine Exports Limited," dated August 12, 2010 (Falcon Third Country Market Memo).

From August to September 2010, we received responses to sections B and C (*i.e.,* the sections covering comparison market and U.S. sales, respectively) of the questionnaire from Apex and Falcon, and section D (*i.e.,* the section covering cost of production (COP) and constructed value (CV)) of the questionnaire from Falcon. Also in these months, we issued a supplemental questionnaire regarding section A to Falcon and we received Falcon's response.

On September 2, 2010, the petitioner requested that the Department initiate a sales-below-cost investigation related to Apex's sales to the United Kingdom.

On October 14, 2010, we initiated a sales-below-cost investigation for Apex. *See* the memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "The Petitioner's Allegation of Sales Below the Cost of Production for Apex Exports," dated October 14, 2010 (Sales-Below-Cost-Memo for Apex). On this same date, we required Apex to respond to section D of the questionnaire. Apex submitted its response in November 2010.

On October 20, 2010, the Department extended the preliminary results in the current review to no later than February 28, 2011. *See Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the 2009–2010 Administrative Reviews,* 75 FR 62099 (Oct. 20, 2010) (*2009–2010 Preliminary Extension*).[5] From October through December 2010, we issued supplemental sales and cost questionnaires to Apex and Falcon. Apex and Falcon responded to these questionnaires from November 2010 through January 2011.

In January 2011, the Department verified the sales data reported by Apex in India. In February 2011, Apex submitted updated sales information at the Department's request.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[6] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

[2] The Liberty Group consists of the following companies: (1) Devi Marine Food Exports Private Limited; (2) Kader Exports Private Limited; (3) Kader Investment and Trading Company Private Limited; (4) Liberty Frozen Foods Pvt. Ltd.; (5) Liberty Oil Mills Ltd.; (6) Premier Marine Products; and (7) Universal Cold Storage Private Limited.

[3] The domestic processors consist of the American Shrimp Processors Association and the Louisiana Shrimp Association.

[4] The petitioner is the Ad Hoc Shrimp Trade Action Committee.

[5] In this notice, we incorrectly stated that the Department would issue the preliminary results no later than March 1, 2011. *See 2009–2010 Prelminary Extension,* 75 FR at 62100.

[6] "Tails" in this context means the tail fan, which includes the telson and the uropods.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Partial Rescission of Review

On July 19, 2010, the Department published its final results for the February 1, 2008, through January 31, 2009, administrative review of the antidumping duty on shrimp from India. *See 2008–2009 Indian Shrimp Final.* In that review, we found that Devi met the requirements of revocation as described in 19 CFR 351.222(b) and, thus, we revoked the *Shrimp Order* with respect to subject merchandise produced and exported by Devi. As a result of Devi's revocation in 2008–2009 administrative review, we are rescinding this administrative review with respect to Devi because the merchandise produced and sold by Devi is not subject to the order on shrimp from India as of February 1, 2009.

Because we have revoked the *Shrimp Order* with respect to subject merchandise produced and exported by Devi, we have instructed CBP that entries of such merchandise that were suspended on or after February 1, 2009, should be liquidated without regard to antidumping duties and that all cash deposits collected should be returned with interest.

Preliminary Determination of No Shipments

As noted in the "Background" section above, 20 companies indicated that they had no shipments of subject merchandise to the United States during the POR. The Department subsequently confirmed with CBP the no-shipment claim made by 19 of these companies. Because the evidence on the record indicates that these companies did not export subject merchandise to the United States during the POR, we preliminarily determine that the following 19 companies had no reviewable transactions during the POR:

(1) Abad Fisheries Pvt. Ltd.
(2) Accelerated Freeze Drying Company Ltd.[7]
(3) Baby Marine International
(4) Baby Marine Sarass
(5) Blue Water Foods & Exports P. Ltd.
(6) BMR Exports
(7) Castlerock Fisheries Pvt. Ltd.
(8) Coastal Corporation Ltd.
(9) Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company
(10) G A Randerian (P) Limited[8]
(11) GKS Business Associates (P) Ltd.[9]
(12) Kalyan Aqua & Marine Exports India Pvt. Ltd.
(13) L. G. Sea Foods[10]
(14) Lewis Natural Foods Ltd.
(15) Libran Cold Storages Pvt. Ltd.
(16) Shimpo Exports
(17) SSF Limited
(18) Sterling Foods
(19) Unitriveni Overseas

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the 22 companies listed above, and exported by other parties at the all-others rate, should we continue to find that these companies had no shipments of subject merchandise during the POR in our final results. *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (Sept. 17, 2010). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to these 22 companies and issue appropriate instructions to CBP based on the final results of the review. *See* the "Assessment Rates" section of this notice below.

With respect to the remaining company which certified that it had no shipments during the POR, Triveni Fisheries Pvt. Ltd. (Triveni), we were unable to confirm this company's no-shipment status with CBP. Accordingly, in February 2011, we requested that Triveni clarify its no-shipment certification. Because this information was not received in time for use in the preliminary results, we are unable to prelminarily conclude that Triveni had no reviewable transactions in this administrative review. However, in the event Triveni provides additional information supporting its no shipment claim in response to our request, we

[7] This company was listed in the *Initiation Notice* as Accelerated Freeze-Drying Company Ltd.

[8] This company was listed in the *Initiation Notice* as G A Randerian Ltd.

[9] This company was listed in the *Initiation Notice* as G.K S Business Associates Pvt. Ltd.

[10] This company was listed in the *Initiation Notice* as L.G Seafoods.

expect to consider this information in the final results.

Comparisons to Normal Value

To determine whether sales of shrimp from India to the United States were made at less than NV, we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to sections 773(a)(1)(B)(ii) and 777A(d)(2) of the Act, for Apex and Falcon, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Apex and Falcon, covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made in the third country market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Apex and Falcon in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative. Where there were no sales of identical or similar merchandise, we made product comparisons using CV, as discussed in the "Calculation of Normal Value Based on Constructed Value" section below. *See* section 773(a)(4) of the Act.

Export Price

For all U.S. sales made by Apex and Falcon, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record.

A. Apex

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, export inspection agency (EIA) fees, foreign brokerage and handling expenses, various foreign miscellaneous shipment charges, international freight expenses, terminal handling charges, marine insurance expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. brokerage and handling expenses, and U.S. inland freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

B. Falcon

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for cold storage expenses, loading and unloading expenses, trailer hire expenses, foreign inland freight expenses, port charges, export survey charges, terminal handling charges, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for each of the respondents was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. For Apex and Falcon, we selected the United Kingdom and Japan, respectively, as the comparison markets because, among other things, these companies' sales of foreign like product in those countries were the most similar to the subject merchandise. For further discussion, see the Apex Third Country Market Memo and the Falcon Third Country Market Memo. Therefore, as the basis for comparison market sales, we used sales to the United Kingdom and Japan, respectively, for Apex and Falcon, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999, 51001 (Aug. 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[11] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Tech., Inc.* v. *United States,* 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or

[11] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See, e.g., OJ from Brazil,* 75 FR at 51001.

In this administrative review, we obtained information from both respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Apex

Apex reported that it made EP sales in the U.S. market to trading companies. We examined the selling activities performed for U.S. sales and found that Apex performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India and the United States); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on the selling function categories, we find that Apex performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel (*i.e.,* direct sales to unaffiliated customers) and the selling activities to Apex's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Apex reported that it made sales to trading companies and that all selling functions were performed at the same levels of intensity as in the U.S. market. We examined the selling activities performed for third country sales, and found that Apex performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. Accordingly, based on these selling functions noted above, we find that Apex performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Apex's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Apex.

Finally, we compared the EP LOT to the third country market LOT and found that the selling functions performed for U.S. and third country market customers do not differ, as Apex performed the same selling functions at the same relative level of intensity in both markets. Therefore, we determine that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

2. Falcon

Falcon reported that it made EP sales in the U.S. market to trading companies. We examined the selling activities performed for U.S. sales and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India and the United States); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on the selling function categories, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel (*i.e.,* direct sales to unaffiliated customers) and the selling activities to Falcon's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Falcon reported that it made sales to trading companies and that all selling functions were performed at the same levels of intensity as in the U.S. market. We examined the selling activities performed for third country sales, and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. Accordingly, based on these selling functions noted above, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Falcon's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Falcon.

Finally, we compared the EP LOT to the third country market LOT and found that the selling functions performed for U.S. and third country market customers do not differ, as Falcon performed the same selling functions at the same relative level of intensity in both markets. Therefore, we determine that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

C. Cost of Production Analysis

On September 2, 2010, the petitioner alleged that Apex made sales to the United Kingdom that were below the COP. Based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that Apex's sales of shrimp in the United Kingdom were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Apex's sales were made at prices below its COP. *See* Sales-Below-Cost-Memo for Apex.

In addition, we found that Falcon made sales in the same comparison market (*i.e.,* Japan) below the COP in the most recently completed segment of this proceeding, as of the date of initiation of this review, and such sales were disregarded. *See Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33409, 33410 (July 13, 2009). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, we preliminarily find that there are reasonable grounds to believe or suspect

that Falcon made sales in the third country market at prices below the cost of producing the merchandise during the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of third country selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except for the following instances.

a. *Apex:*

i. We have revised Apex's G&A expenses to include imputed salary expenses for its managing partner.

ii. We have revised Apex's financial expenses to exclude Apex's claimed interest income received on antidumping duty deposit refunds because the asset generating the income was not short-term working capital.

For further discussion of these adjustments, see the memorandum from Kristin Case, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Apex Exports," dated February 28, 2011.

b. *Falcon:*

i. We adjusted Falcon's reported G&A expenses to include property taxes.

ii. We have revised Falcon's financial expenses to exclude Falcon's claimed interest income received on antidumping duty deposit refunds because the asset generating the income was not short-term working capital.

For further discussion of these adjustments, see the memorandum from Ji Young Oh, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Falcon Marine Exports Limited," dated February 28, 2011.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's third country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Apex and Falcon's third country sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no comparable third country sales in the ordinary course of trade, we compared EP to CV in accordance with section 773(a)(4) of the Act. *See* "Calculation of Normal Value Based on Constructed Value" section below.

D. Calculation of Normal Value Based on Comparison Market Prices

1. Apex

For Apex, we calculated NV based on delivered prices to unaffiliated customers in United Kingdom. We made adjustments to the starting price, where appropriate, for discounts, in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland freight expenses, foreign brokerage and handling expenses, various foreign miscellaneous shipment charges and international freight expenses (including terminal handling charges), under section 773(a)(6)(B) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank charges, Export Credit Guarantee Corporation (ECGC) fees, EIA fees, imputed credit expenses, and other direct selling expenses), and commissions. We recalculated Apex's imputed credit expenses for two U.S. sales based upon revised dates of payment. Specifically, because Apex was unable to tie receipt of payment for two invoices to its accounting system, we have preliminarily treated these two sales as unpaid. In accordance with the Department's practice, we have set the payment date for these sales equal to the last day Apex could submit new factual information to the Department (*i.e.,* January 21, 2011, the last day of verification). *See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 40492 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 5. For further discussion, see the Memorandum to the File, from Henry Almond, Analyst, Office 2, AD/CVD Operations, entitled, "Calculation Adjustments for Apex Exports for the Preliminary Results in the 2009–2010 Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2011. Because commissions were paid only in the comparison market, we made an upward adjustment to NV for the lesser of: (1) The amount of commission paid in the comparison market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the U.S. market. *See* 19 CFR 351.410(e).

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

2. Falcon

We based NV for Falcon on prices to unaffiliated customers in Japan. We made adjustments, where appropriate, to the starting price for discounts, in accordance with 19 CFR 351.401(c). We also made deductions, where appropriate, from the starting price for cold storage expenses, loading and unloading expenses, trailer hire expenses, foreign inland freight expenses, port charges, export survey charges, terminal and handling charges, foreign brokerage and handling expenses, and international freight expenses, under section 773(a)(6)(B)(ii) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for commissions, imputed credit expenses, bank fees, EIA fees, ECGC premiums, outside inspection/lab expenses, letter of credit amendment charges, and other miscellaneous selling expenses. Finally, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) The amount of commission paid in the U.S. market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the comparison market. *See* 19 CFR 351.410(e). If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. *Id.*

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those shrimp products for which we could not determine the NV based on comparison market sales because, as noted in the "Results of the COP Test" section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV. *See* 19 CFR 351.410(c). We also made an adjustment for Falcon, when applicable, for comparison market indirect selling expenses to offset U.S. commissions in EP comparisons. *See* 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars for all spot transactions by Apex and Falcon, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In addition, both Apex and Falcon reported that they purchased forward exchange contracts which were used to convert their sales prices into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such currency in the forward sale agreement to convert the foreign currency. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India,* 69 FR 76916 (Dec. 23, 2004) and accompanying Issues and Decision Memorandum at Comment 6; *see also Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 9991, 9998 (Mar. 9, 2010), unchanged in *2008–2009 Indian Shrimp Final.* Therefore, for Apex and Falcon we used the reported forward exchange rates for currency conversions where applicable.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2009, through January 31, 2010, as follows:

Manufacturer/exporter	Percent margin
Apex Exports	2.31
Falcon Marine Exports Limited	1.36
Review-Specific Average Rate Applicable to the Following Companies:[12]	
Abad Fisheries Pvt. Ltd.	*
Accelerated Freeze Drying Company Ltd.	*
Adani Exports Ltd	1.69
Adilakshmi Enterprises	1.69
Allana Frozen Foods Pvt. Ltd.	1.69
Allansons Ltd.	1.69
AMI Enterprises	1.69
Amulya Sea Foods	1.69
Anand Aqua Exports	1.69
Ananda Aqua Applications/ Ananda Aqua Exports (P) Limited/Ananda Foods	1.69
Andaman Seafoods Pvt. Ltd.	1.69
Angelique Intl	1.69
Anjaneya Seafoods	1.69
Anjani Marine Traders	1.69
Asvini Exports	1.69
Asvini Feeds Limited	1.69
Asvini Fisheries Private Limited	1.69
Avanti Feeds Limited	1.69
Ayshwarya Seafood Private Limited	1.69
Baby Marine Exports	1.69
Baby Marine International	*
Baby Marine Sarass	*
Bhatsons Aquatic Products	1.69
Bhavani Seafoods	1.69
Bhisti Exports	1.69
Bijaya Marine Products	1.69
Blue Water Foods & Exports P. Ltd.	*
Bluefin Enterprises	1.69
Bluepark Seafoods Pvt. Ltd.	1.69
Britto Exports	1.69
BMR Exports	*
C P Aquaculture (India) Ltd.	1.69
Calcutta Seafoods Pvt. Ltd.	1.69
Capithan Exporting Co.	1.69
Castlerock Fisheries Pvt. Ltd.	*
Chemmeens (Regd)	1.69
Cherukattu Industries (Marine Div.)	1.69
Choice Canning Company	1.69

[12] This rate is based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010) (*Bearings from France*).

Manufacturer/exporter	Percent margin
Choice Trading Corporation Private Limited	1.69
Coastal Corporation Ltd.	*
Cochin Frozen Food Exports Pvt. Ltd.	1.69
Coreline Exports	1.69
Corlim Marine Exports Pvt. Ltd.	1.69
Damco India Private	1.69
Devi Fisheries Limited	1.69
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited	1.69
Dhanamjaya Impex P. Ltd.	1.69
Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company	*
Digha Seafood Exports	1.69
Esmario Export Enterprises	1.69
Exporter Coreline Exports	1.69
Five Star Marine Exports Private Limited	1.69
Forstar Frozen Foods Pvt. Ltd.	1.69
Frigerio Conserva Allana Limited	1.69
Frontline Exports Pvt. Ltd.	1.69
G A Randerian (P) Limited	*
Gadre Marine Exports	1.69
Galaxy Maritech Exports P. Ltd.	1.69
Gayatri Sea Foods and Feeds Private Ltd.	1.69
Gayatri Seafoods	1.69
Geo Aquatic Products (P) Ltd.	1.69
Geo Seafoods	1.69
GKS Business Associates (P) Ltd.	*
Grandtrust Overseas (P) Ltd.	1.69
GVR Exports Pvt. Ltd.	1.69
Haripriya Marine Export Pvt. Ltd.	1.69
Harmony Spices Pvt. Ltd.	1.69
HIC ABF Special Foods Pvt. Ltd.	1.69
Hindustan Lever, Ltd.	1.69
Hiravata Ice & Cold Storage	1.69
Hiravati Exports Pvt. Ltd.	1.69
Hiravati International Pvt. Ltd. (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India)	1.69
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	1.69
IFB Agro Industries Ltd.	1.69
Indian Aquatic Products	1.69
Indo Aquatics	1.69
Innovative Foods Limited	1.69
International Freezefish Exports	1.69
Interseas	1.69
ITC Limited, International Business	1.69
ITC Ltd.	1.69
Jagadeesh Marine Exports	1.69
Jaya Satya Marine Exports	1.69
Jaya Satya Marine Exports Pvt. Ltd.	1.69
Jayalakshmi Sea Foods Private Limited	1.69
Jinny Marine Traders	1.69
Jiya Packagings	1.69
KNR Marine Exports	1.69
K R M Marine Exports Ltd.	1.69
K V Marine Exports	1.69
Kalyan Aqua & Marine Exports India Pvt. Ltd.	*
Kalyanee Marine	1.69
Kay Kay Exports	1.69
Kings Marine Products	1.69
Koluthara Exports Ltd.	1.69
Konark Aquatics & Exports Pvt. Ltd.	1.69
L. G. Sea Foods	*
Landauer Ltd. C O Falcon Marine Exports Ltd.	1.69
Lewis Natural Foods Ltd.	*
Libran Cold Storages Pvt. Ltd.	*
Lotus Sea Farms	1.69
Lourde Exports	1.69
Magnum Estates Limited	1.69
Magnum Export	1.69
Magnum Sea Foods Limited	1.69
Malabar Arabian Fisheries	1.69
Malnad Exports Pvt. Ltd.	1.69
Mangala Marine Exim India Private Ltd.	1.69
Mangala Sea Products	1.69
Marine Exports	1.69
Meenaxi Fisheries Pvt. Ltd.	1.69
MSC Marine Exporters	1.69
MSRDR Exports	1.69
MTR Foods	1.69
N.C. John & Sons (P) Ltd	1.69
Naga Hanuman Fish Packers	1.69
Naik Frozen Foods	1.69
Naik Seafoods Ltd.	1.69
Navayuga Exports Ltd.	1.69
Nekkanti Sea Foods Limited	1.69
NGR Aqua International	1.69
Nila Sea Foods Pvt. Ltd.	1.69
Nine Up Frozen Foods	1.69
Overseas Marine Export	1.69
Penver Products (P) Ltd.	1.69
Pijikay International Exports P Ltd.	1.69
Pisces Seafood International	1.69
Premier Seafoods Exim (P) Ltd.	1.69
R V R Marine Products Private Limited	1.69
Raa Systems Pvt. Ltd.	1.69
Raju Exports	1.69
Ram's Assorted Cold Storage Ltd.	1.69
Raunaq Ice & Cold Storage	1.69
Raysons Aquatics Pvt. Ltd.	1.69
Razban Seafoods Ltd.	1.69
RBT Exports	1.69
RDR Exports	1.69
Riviera Exports Pvt. Ltd.	1.69
Rohi Marine Private Ltd.	1.69
Royal Cold Storage India P Ltd.	1.69
S & S Seafoods	1.69
S. A. Exports	1.69
S Chanchala Combines	1.69
Safa Enterprises	1.69
Sagar Foods	1.69
Sagar Grandhi Exports Pvt. Ltd.	1.69
Sagarvihar Fisheries Pvt. Ltd.	1.69
SAI Marine Exports Pvt. Ltd.	1.69
SAI Sea Foods	1.69
Sanchita Marine Products P Ltd	1.69
Sandhya Aqua Exports	1.69
Sandhya Aqua Exports Pvt. Ltd.	1.69
Sandhya Marines Limited	1.69
Santhi Fisheries & Exports Ltd.	1.69
Satya Seafoods Private Limited	1.69
Sawant Food Products	1.69
Seagold Overseas Pvt. Ltd.	1.69
Selvam Exports Private Limited	1.69
Sharat Industries Ltd.	1.69
Shimpo Exports	*
Shippers Exports	1.69
Shroff Processed Food & Cold Storage P Ltd.	1.69
Silver Seafood	1.69
Sita Marine Exports	1.69
SLS Exports Pvt. Ltd.	1.69
Sprint Exports Pvt. Ltd.	1.69
Sri Chandrakantha Marine Exports	1.69
Sri Sakkthi Cold Storage	1.69
Sri Sakthi Marine Products P Ltd.	1.69
Sri Satya Marine Exports	1.69
Sri Venkata Padmavathi Marine Foods Pvt. Ltd.	1.69
Srikanth International	1.69
Srikanth International Agri Exports & Imports	1.69
SSF Limited	*
Star Agro Marine Exports	1.69
Star Agro Marine Exports Private Limited	1.69
Sterling Foods	*
Sun Bio-Technology Ltd.	1.69
Supreme Exports	1.69
Surya Marine Exports	1.69
Suryamitra Exim (P) Ltd.	1.69
Suvarna Rekha Exports Private Limited	1.69
Suvarna Rekha Marines P Ltd.	1.69
TBR Exports Pvt Ltd.	1.69
Teekay Marine P. Ltd.	1.69
Tejaswani Enterprises	1.69
The Waterbase Ltd.	1.69
Triveni Fisheries P Ltd.	1.69
Unitriveni Overseas	*
Usha Seafoods	1.69
V.S Exim Pvt Ltd.	1.69
Vaibhav Sea Foods	1.69
Veejay Impex	1.69
Veeteejay Exim Pvt., Ltd.	1.69
Victoria Marine & Agro Exports Ltd.	1.69
Vijayalaxmi Seafoods	1.69
Vinner Marine	1.69
Vishal Exports	1.69
Wellcome Fisheries Limited	1.69
West Coast Frozen Foods Private Limited	1.69

This rate is based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010) (*Bearings from France*).

*\ No shipments or sales subject to this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than the later of 30 days after the date of publication of this notice or one week after the issuance of the cost verification report for Apex. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. *Id.* The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Apex and Falcon, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. *See* 19 CFR 351.212(b)(1).

For the companies which were not selected for individual review, we will calculate an assessment rate based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions. In situations where we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information but where use of a simple average does not yield the best proxy of the weighted-average margin relative to publicly available data, normally we will use the publicly available figures as a matter of practice. *See Bearings from France,* 75 FR at 53663.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. *See* section 751(a)(2)(C) of the Act.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in the final results of this review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation. *See Shrimp Order,* 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–4974 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination

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

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on certain

frozen warmwater shrimp (shrimp) from Thailand with respect to 152 companies. The respondents which the Department selected for individual examination are Marine Gold Products Co., Ltd. (MRG) and Pakfood Public Company Limited and its affiliated subsidiaries (collectively, "Pakfood").[1] The respondents which were not selected for individual examination are listed in the "Preliminary Results of Review" section of this notice. This is the fifth administrative review of this order. The period of review (POR) is February 1, 2009, through January 31, 2010.

We preliminarily determine that sales made by MRG and Pakfood have been made at below normal value (NV) and, therefore, are subject to antidumping duties. In addition, based on the preliminary results for the respondents selected for individual examination, we have preliminarily determined a margin for those companies that were not individually examined.

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* March 4, 2011.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Holly Phelps, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand,* 70 FR 5145 (Feb. 1, 2005) (*Shrimp Order*). On February 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Thailand for the period February 1, 2009, through January 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 5037 (Feb. 1, 2010). In response to timely requests from interested parties pursuant to 19 CFR 351.213(b)(1) and (2) to conduct an administrative review of the U.S. sales of shrimp by numerous Thai producers/exporters, the Department published a notice of initiation of administrative review for 153 companies. *See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 75 FR 17693 (Apr. 7, 2010) (*Initiation Notice*).[2]

In the *Initiation Notice,* the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based upon CBP entry data. *See Initiation Notice,* 75 FR at 17699. In April and May 2010, we received comments on the issue of respondent selection from MRG, Pakfood, the domestic processors,[3] and the petitioner.[4]

In April and May 2010, we received statements from 14 companies that indicated that they had no shipments of subject merchandise to the United States during the POR.

In July 2010, after considering the large number of potential exporters or producers involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Elizabeth Eastwood, Senior Analyst, Office 2, AD/CVD Operations, entitled, "2009–2010 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents for Individual Review," dated July 9, 2010 (Respondent Selection Memo). As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two producers/exporters accounting for the largest volume of certain frozen warmwater shrimp from Thailand during the POR (*i.e.,* based on CBP entry data, Pakfood and MRG). Accordingly, we issued the antidumping duty questionnaire to these companies on July 9, 2010.

On August 18, 2010, the domestic processors alleged that a particular market situation existed in Thailand during the POR that prevented home market prices of shrimp from being competitively set. Therefore, the domestic processors argued that the Department should not use home market sales as a basis for NV. In August and September 2010, we received rebuttal and surrebuttal comments regarding this issue from the respondents and the domestic processors.

In August 2010, we received responses from MRG and Pakfood to section A (*i.e.,* the section related to general information) of the Department's questionnaire. Also in August 2010, we issued a supplemental section A questionnaire to Pakfood. In September 2010, we received responses from MRG and Pakfood to sections B and C (*i.e.,* the sections covering the comparison market and U.S. sales, respectively) of the Department's questionnaire. In this same month, we also received Pakfood's response to section D (*i.e.,* the section covering cost of production (COP) and constructed value (CV)) of the Department's questionnaire and its response to the Department's supplemental section A questionnaire.

On September 28, 2010, the petitioner requested that the Department automatically initiate a sales-below-cost-investigation of MRG. On October 1, 2010, we issued a letter to the petitioner denying this request because the Department had not made a finding to disregard sales-below-cost for MRG in the most recently completed segment of the proceeding in which it participated as of the date of initiation of the current review.[5] On October 6, 2010, the petitioner filed a company-specific sales-below-cost allegation for MRG.

On October 7, 2010, the Department extended the preliminary results in the current review to no later than February

[1] These subsidiaries are: Okeanos Co., Ltd., Okeanos Food Co., Ltd., Takzin Samut Co., Ltd., Chaophraya Cold Storage Co., Ltd., and Asia Pacific (Thailand) Company Ltd.

[2] In the *Initiation Notice,* the Department separately listed Bright Sea Co., Ltd. in the list of companies under review. However, in the original investigation, the Department found that The Union Frozen Products Co., Ltd. and Bright Sea Co., Ltd. comprised a single entity. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand,* 69 FR 76918 (Dec. 23, 2004). Therefore, we have treated Bright Sea Co., Ltd. and The Union Frozen Products, Co., Ltd. as a single entity for purposes of the preliminary results.

[3] The domestic processors consist of the American Shrimp Processors Association and the Louisiana Shrimp Association.

[4] The petitioner is the Ad Hoc Shrimp Trade Action Committee.

[5] *See* generally Import Administration Policy Bulletin 05–2, which can be found at *http://ia.ita.doc.gov/policy/bull05–2.pdf.*

28, 2011. *See Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the 2009–2010 Administrative Reviews,* 75 FR 62099, 62100 (Oct. 7, 2010) (*2009–2010 Preliminary Extension*).[6] Also in October 2010, we issued supplemental sales questionnaires to each respondent, and we received responses to these questionnaires.

On October 21, 2010, the Department initiated a sales-below-cost investigation for MRG, and on that date we instructed MRG to respond to section D of the Department's questionnaire. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team, entitled, "February 2009–January 2010 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: The Petitioner's Allegation of Sales-Below-Cost of Production for Marine Gold Products Ltd.," dated October 21, 2010 (MRG Cost Investigation Memo).

On October 29, 2010, the Department found that there was insufficient evidence to determine that a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Act, existed in Thailand during the POR that would prevent a proper comparison between respondents' export prices and their home market prices. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Blaine Wiltse, Trade Analyst, Office 2, AD/CVD Operations, entitled, "2009–2010 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Allegation of a Particular Market Situation," dated October 29, 2010.

In November and December 2010, we issued supplemental sales and cost questionnaires to both respondents, and we received responses to these supplemental questionnaires in these months.

In January and February 2011, we verified the sales and cost data reported by Pakfood.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[7] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Thai white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Preliminary No Shipment Determination

In April and May 2010, 14 companies notified the Department that they had no shipments of subject merchandise to the United States during the POR; only 12 of these claims, however, were properly filed and/or contained information sufficient to determine whether shipments were, in fact, made. The Department subsequently confirmed with CBP the no-shipment claim made by these 12 companies. Because the evidence on the record indicates that these companies did not export subject merchandise to the United States during the POR, we preliminarily determine that the following 12 companies had no reviewable transactions during the POR:

(1) American Commercial Transport, Inc.[8]

(2) Ampai Frozen Food Co., Ltd.

(3) Far East Cold Storage Co., Ltd.

(4) Grobest Frozen Foods Co., Ltd.

(5) Inter-Oceanic Resources Co., Ltd.

(6) Leo Transport Corporation Ltd.[9]

(7) Mahachai Food Processing Co., Ltd.

(8) S. Khonkaen Food Industry Public Co., Ltd.

(9) Siam Marine Frozen Foods Co., Ltd.

(10) Siam Ocean Frozen Foods Co. Ltd.

(11) Thai Union Manufacturing Co., Ltd.

[6] In this notice, we incorrectly stated that the Department would issue the preliminary results no later than March 1, 2011. *See 2009–2010 Prelminary Extension,* 75 FR at 62100.

[7] "Tails" in this context means the tail fan, which includes the telson and the uropods.

[8] This company was listed in the *Initiation Notice* as American Commercial Transport (Thailand).

[9] This company was listed in the *Initiation Notice* as Leo Transports.

(12) V. Thai Food Product Co., Ltd.[10]

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the 12 companies listed above and exported by other parties at the all-others rate, should we continue to find that these companies had no shipments of subject merchandise in the POR in our final results. *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (Sept. 17, 2010); and *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results of Antidumping Duty Administrative Review,* 75 FR 76700, 76701 (Dec. 9, 2010).

In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to these 12 companies and issue appropriate instructions to CBP based on the final results of the review. *See* the "Assessment Rates" section of this notice, below.

[10] This company was listed in the *Initiation Notice* as V Thai Food Product.

With respect to the remaining two companies which submitted deficient statements of no shipments during the POR, A. Wattanachai Frozen Products Co., Ltd. (Wattanachai) did not properly certify its statement of no shipments in accordance with 19 CFR 351.303(g)(1), while Calsonic Kansei (Thailand) Co., Ltd.'s (Calsonic) statement of no shipments contained inadequate information. The Department contacted each of these companies on multiple occasions requesting that they correct the deficiencies in their statements of no shipments; however, neither company responded to our requests. Therefore, we preliminarily find that there is insufficient evidence on the record of this review to conclude that these companies made no shipments of subject merchandise to the United States during the POR. Therefore, we are continuing to include both companies in this administrative review.

Comparisons to Normal Value

To determine whether sales of shrimp from Thailand to the United States were made at less than NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the "Constructed Export Price/Export Price" and "Normal Value" sections of this notice.

Pursuant to sections 773(a)(1)(B)(i) and 777A(d)(2) of the Act, for MRG and Pakfood, we compared the EPs or CEPs of individual U.S. transactions, as applicable, to the weighted-average NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by MRG and Pakfood covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales of non-broken shrimp to sales of the non-broken most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by MRG and Pakfood in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative. Where there were no sales of identical or similar non-broken merchandise, we made product comparisons using CV, as discussed in the "Calculation of Normal Value Based on Constructed Value" section below. *See* section 773(a)(4) of the Act.

With respect to sales comparisons involving broken shrimp, we compared Pakfood's sales of broken shrimp in the United States to sales of comparable quality shrimp in the home market. Where there were no sales of identical broken shrimp in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of broken shrimp to sales of the most similar broken shrimp made in the ordinary course of trade. Where there were no sales of identical or similar broken shrimp, we made product comparisons using CV. MRG did not make sales of broken shrimp to the United States during the POR.

Because we disallowed Pakfood's differentiation of trays under the "presentation" product characteristic in the final results of the 2008–2009 administrative review, we revised Pakfood's relevant presentation codes and product control numbers in our margin calculations, including the calculation of the COP, to reflect this change. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 54847 (Sept. 9, 2010), and accompanying Issues and Decision Memorandum at Comment 12.

Constructed Export Price/Export Price

For certain U.S. sales made by MRG and Pakfood, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold to unaffiliated purchasers after its importation into the United States.

For the remaining U.S. sales made by MRG and Pakfood, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to

importation and CEP methodology was not otherwise warranted based on the facts of record.

MRG reported that, during the POR, it sold subject merchandise to the United States that it purchased from an unaffiliated producer. In such cases, the Department normally would base NV for those sales on MRG's sales in the comparison market of foreign like product produced by the same unaffiliated producer, in accordance with sections 771(16) and 773(a)(1)(B)(I) of the Act. In this case, however, MRG made no such sales in the home market. While the Department could have requested that the unaffiliated producer provide cost data for the U.S. sales, and based NV on the CV of the merchandise, we find that the percentage of MRG's U.S. sales accounted for by this merchandise is not significant. Therefore, we have not requested such information and, instead, as facts otherwise available, pursuant to section 776(a)(1) of the Act, we have used MRG's costs to produce merchandise with characteristics identical or similar to the characteristics of the merchandise produced by the unaffiliated producer as the basis for CV. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review,* 73 FR 45393, 45398 (Aug. 5, 2008), unchanged in *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review,* 73 FR 74704 (Dec. 9, 2008). For further discussion, see the Memorandum to the File, from Blaine Wiltse, Analyst, Office 2, AD/CVD Operations, entitled, "Calculation Adjustments for Marine Gold Products Limited, for the Preliminary Results in the 2009–2010 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand," dated February 28, 2011 (MRG Prelim Calc Memo).

We also revised the date of sale for certain of MRG's U.S. sales to report the date of the last invoice issued, which set the final material terms of sale, as the date of sale. For further discussion, see the MRG Prelim Calc Memo.

We revised the data reported by Pakfood to take into account minor corrections found at verification. *See* Memorandum to the File, from Holly Phelps, Analyst, Office 2, AD/CVD Operations, entitled, "Calculation Adjustments for Pakfood Public Company Limited and its affiliated subsidiaries, Okeanos Co., Ltd., Okeanos Food Co., Ltd., Takzin Samut Co., Ltd., Chaophraya Coldstorage Co., Ltd., and Asia Pacific (Thailand) Company Ltd. (collectively, "Pakfood"), for the Preliminary Results in the 2009–2010 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand," dated February 28, 2011 (Pakfood Prelim Calc Memo).

A. MRG

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for billing adjustments and rebates in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign inland freight expenses, foreign warehousing expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses, and U.S. warehousing expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

We based CEP on C&F (cost and freight) or DDP (delivered, duty paid) prices to unaffiliated purchasers in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign warehousing expenses, foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees). In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.,* bank fees and imputed credit expenses) and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by MRG on its sales of the subject merchandise in the United States and the profit associated with those sales.

B. Pakfood

We based EP on C&F and DDP packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign warehousing expenses, foreign inland freight expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, FDA inspection expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees), where appropriate, in accordance with section 772(c)(2)(A) of the Act. We recalculated foreign warehousing expenses to remove the amount of certain "short" payments received by Pakfood on its CEP sales. For further discussion, see the Pakfood Prelim Calc Memo.

We based CEP on DDP prices to unaffiliated purchasers in the United States. We made deductions for billing adjustments, where appropriate, based on the value of "short" payments not collected by Pakfood during the POR, which Pakfood reported as part of warehousing expenses. For further discussion, see the Pakfood Prelim Calc Memo.

We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign warehousing expenses, foreign inland freight expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, FDA inspection expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees). We recalculated foreign warehousing expenses in the same manner noted above.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted direct selling expenses (*i.e.,* imputed credit expenses), and indirect selling expenses (including inventory carrying costs). Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Pakfood on its sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C) of the Act. Based on this comparison, we determined that MRG and Pakfood had

viable home markets during the POR. Consequently, we based NV on home market sales for MRG and Pakfood.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999, 51001 (Aug. 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[11] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Tech., Inc.* v. *United States,* 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See, e.g., OJ from Brazil,* 75 FR at 51001.

In this administrative review, we obtained information from both respondents regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. MRG

MRG reported that it made sales through one channel of distribution in the United States (*i.e.,* EP sales made directly to unaffiliated customers). However, during the POR, certain of MRG's EP sales were cancelled and then resold after importation into the United States on a CEP basis. These CEP sales represent a second channel of distribution for MRG's U.S. sales during the POR.

MRG reported performing the following selling functions for its EP U.S. sales: Sales forecasting/market research; sales promotion/trade shows and advertising; direct sales personnel; paying commissions; order processing/sales documentation; packing/packaging; inventory maintenance; freight/delivery arrangements; providing cash discounts; providing financing; and warranty service. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and, (4) warranty and technical support. Accordingly, based on the selling function categories, we find that MRG performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all EP U.S. sales. MRG reported performing the same selling functions for its CEP U.S. sales as its EP U.S. sales. Therefore, because MRG did not perform any different selling functions to make its CEP U.S. sales, we find that such sales do not constitute a different LOT in the U.S. market. Accordingly, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, MRG reported that it made sales through two channels of distribution (*i.e.,* sales to one customer which purchases shrimp for processing into non-subject merchandise; and sales to all other customers). We examined the selling activities performed for these channels, and found that MRG performed the following selling functions for both channels: Order processing/sales documentation, inventory maintenance, limited freight/delivery services, financing services, warranty services, and packing/packaging. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we find that MRG performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all customers in the home market. In addition, MRG reported that it performed sales forecasting/market research and employed direct sales personnel at a low-to-medium level of intensity for one home market channel, and did not perform these activities for the other home market channel. However, after analyzing the selling functions performed for both sales channels in the home market, we find that the distinctions in selling functions are not significant. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that there is one LOT in the home market for MRG.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers are essentially the same, with the exception of commission payments made for certain U.S. sales. We note that this difference is not a sufficient basis to determine that the U.S. LOT is different from the home market LOT. Moreover, although there are some differences in the level of intensity at which some of the selling functions were performed in the two markets, we find that these differences are not significant. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment or CEP offset is warranted.

2. Pakfood

Pakfood reported that it made EP and CEP sales through a single channel of distribution (*i.e.,* direct sales to distributors), and performed the following selling functions for sales to U.S. customers: Sales forecasting, market research, sales promotion, advertising, order processing, procurement/sourcing services, direct sales personnel, provision of cash

[11] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

discounts, payment of commissions, freight and delivery services, warehousing services, and packing. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on the selling function categories, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel (*i.e.,* direct sales to unaffiliated customers) and the selling activities to Pakfood's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Pakfood reported that it made sales to processors, distributors, retailers, and end-users. Pakfood stated that its home market sales were made through a single channel of distribution, direct from factory to customer, and that it performed the following selling functions for sales to home market customers: Sales forecasting, market research, sales promotion, advertising, procurement/sourcing services, order processing, direct sales personnel, provision of cash discounts, freight and delivery services, warehousing, and packing. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing at the same relative level of intensity for all customers in the home market. Because all sales in the home market sales are made through a single distribution channel and the selling activities to Pakfood's customers did not vary within this channel, we preliminarily determine that there is one LOT in the home market for Pakfood.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers are virtually identical, with the exception of commission payments made for certain U.S. sales. We note that this difference is not a sufficient basis to determine that the U.S. LOT is different from the home market LOT. Moreover, although there are some differences in the level of intensity at which some of the selling functions were performed in the two markets, we find that these differences are not significant. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment or CEP offset is warranted.

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that MRG's sales of shrimp in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether MRG's sales were made at prices below its COP. *See* MRG Cost Investigation Memo.

Moreover, we found that Pakfood made sales in the same comparison market below the COP in the most recently completed segment of this proceeding as of the date of initiation of this review and such sales were disregarded. *See Certain Frozen Warmwater Shrimp From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47551, 47552 (Sept. 16, 2009). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, we find that there are reasonable grounds to believe or suspect that Pakfood made sales in the home market at prices below the cost of producing the merchandise in the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of third country selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, for the following instance.

We have revised Pakfood's G&A expenses to eliminate certain double counting of direct selling expenses. For further discussion of these adjustments, see the memorandum from Ernest Gziryan, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Pakfood Public Company Limited," dated February 28, 2011.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of MRG's and Pakfood's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no home market sales in the ordinary course of trade, we compared CEPs or EPs, as appropriate, to CV in accordance with section 773(a)(4) of the Act. *See* "Calculation of Normal Value Based on Constructed Value" section below.

D. Calculation of Normal Value Based on Comparison Market Prices

1. MRG

For MRG, we calculated NV based on delivered prices to unaffiliated customers in the home market. We made adjustments to the starting price, where appropriate, for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland freight expenses and foreign warehousing expenses, under section 773(a)(6)(B) of the Act.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank fees and imputed credit expenses) and commissions, where appropriate. Because commissions were paid only on sales in the U.S. market, we also made a downward adjustment to NV for the lesser of: (1) The amount of commissions paid in the U.S. market; or (2) the amount of indirect selling expenses incurred in the home market. *See* 19 CFR 351.410(e). We recalculated MRG's foreign indirect selling expense ratio to remove sales of scrap from the denominator of the calculation. *See* MRG Prelim Calc Memo.

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.,* imputed credit expenses and bank fees) and commissions. Because commissions were paid only in the U.S. market, we made a downward adjustment to NV for the lesser of: (1) The amount of commission paid in the U.S. market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the home market. *See* 19 CFR 351.410(e). As noted above, we recalculated MRG's foreign indirect selling expense ratio.

Finally, for all price-to-price comparisons, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

2. Pakfood

We based NV for Pakfood on ex-factory or delivered prices to unaffiliated customers in the home market, or prices to affiliated customers in the home market that were determined to be at arm's length. Where appropriate, we made adjustments to the starting price for billing adjustments. We also made deductions, where appropriate, from the starting price for inland freight and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including imputed credit expenses, bank fees, and express mail charges) and commissions, where appropriate. Because commissions were paid only in the U.S. market, we made a downward adjustment to NV for the lesser of: (1) The amount of commission paid in the U.S. market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the home market. *See* 19 CFR 351.410(e).

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.,* imputed credit expenses, bank fees, and express mail charges).

Finally, for all price-to-price comparisons, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for MRG's shrimp products for which we could not determine the NV based on home market sales because, as noted in the "Results of the COP Test" section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For MRG, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for MRG on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act.

For MRG, we made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on MRG's comparison market sales from, and adding U.S. direct selling expenses to, CV. *See* 19 CFR 351.410(c). For comparisons to CEP, we deducted MRG's comparison market direct selling expenses from CV. *Id.* We also made adjustments, when applicable, for MRG's home market indirect selling expenses to offset U.S. commissions in EP comparisons. *See* 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars for all spot transactions by MRG and Pakfood, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In addition, both MRG and Pakfood reported that they purchased forward exchange contracts which were used to convert their sales prices into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such currency in the forward sale agreement to convert the foreign currency. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand,* 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 6; *see also Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12103, 12113 (Mar. 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp form India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 40492 (July 15, 2008).

Therefore, for MRG and Pakfood we used the reported forward exchange rates for currency conversions where applicable.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2009, through January 31, 2010, as follows:

Manufacturer/exporter	Percent margin
Marine Gold Products Co., Ltd	0.68
Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Chaophraya Cold Storage Co., Ltd./Okeanos Co. Ltd./ Okeanos Food Co. Ltd./Takzin Samut Co., Ltd	0.72

Review-Specific Average Rate Applicable to the Following Companies: [12]

Manufacturer/exporter	Percent margin
A. Wattanachai Frozen Products Co., Ltd	0.70
A.S. Intermarine Foods Co., Ltd	0.70
ACU Transport Co., Ltd	0.70
American Commercial Transport (Thailand)	*
Ampai Frozen Food Co., Ltd	*
Apex Maritime (Thailand) Co., Ltd	0.70
Apex Maritime Thailand	0.70
Asian Seafoods Coldstorage Public Co., Ltd/Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd	0.70
Assoc. Commercial Systems	0.70
B.S.A. Food Products Co., Ltd	0.70
Bangkok Dehydrated Marine Product Co., Ltd	0.70
Best Fruits	0.70
C.P. Merchandising Co., Ltd	0.70
C Y Frozen Food Co., Ltd	0.70
Calsonic Kansei (Thailand) Co., Ltd	0.70
Century Industries Co., Ltd	0.70
Chaivaree Marine Products Co., Ltd	0.70
Chaiwarut Co., Ltd	0.70
Charoen Pokphand Foods Public Co., Ltd	0.70
Chue Eie Mong Eak	0.70
Conair Intertraffic Co., Ltd	0.70
Core Seafood Processing Co., Ltd	0.70
Crystal Frozen Foods Co., Ltd and/or Crystal Seafood	0.70
Daedong (Thailand) Co. Ltd	0.70
Daiei Taigen (Thailand) Co., Ltd	0.70
Daiho (Thailand) Co., Ltd	0.70
Dextrans Worldwide (Thailand) Ltd	0.70
Dragon International Furniture Co., Ltd	0.70
Earth Food Manufacturing Co., Ltd	0.70
Enburg Food Thai Co., Ltd	0.70
Extra Maritime Co., Ltd	0.70
F.A.I.T. Corporation Limited	0.70
Far East Cold Storage Co., Ltd	*
Findus (Thailand) Ltd	0.70
Fortune Frozen Foods (Thailand) Co., Ltd	0.70
Frozen Marine Products Co., Ltd	0.70
Fujitsu General (Thailand) Co., Ltd	0.70
Gallant Ocean (Thailand) Co., Ltd/Gallant Seafoods Corporation	0.70
Golden Sea Frozen Foods Co., Ltd	0.70
Good Fortune Cold Storage Co., Ltd	0.70
Good Luck Product Co., Ltd	0.70
Great Food (Dehydration) Co., Ltd	0.70
Grobest Frozen Foods Co., Ltd	*
Gulf Coast Crab Intl.	0.70
H.A.M. International Co., Ltd	0.70
Heng Seafood Limited Partnership	0.70
Herba Bangkok S.L.	0.70
Heritrade Co., Ltd	0.70
HIC (Thailand) Co., Ltd	0.70
I.T. Foods Industries Co., Ltd	0.70

[12] This rate is based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010) (*Bearings from France*).

Manufacturer/exporter	Percent margin
Inter-Furnitech Co., Ltd	0.70
Inter-Oceanic Resources Co., Ltd	*
Inter-Pacific Marine Products Co., Ltd	0.70
Inter-Taste Foods Co., Ltd	0.70
K Fresh	0.70
K. D. Trading Co., Ltd	0.70
KF Foods	0.70
K.L. Cold Storage Co., Ltd	0.70
K & U Enterprise Co., Ltd	0.70
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd	0.70
Kingfisher Holdings Ltd	0.70
Kibun Trdg	0.70
Klang Co., Ltd	0.70
Kitchens of the Ocean (Thailand) Ltd	0.70
Kongphop Frozen Foods Co., Ltd	0.70
Kosamut Frozen Foods Co., Ltd	0.70
Lee Heng Seafood Co., Ltd	0.70
Leo Transports	*
Maersk Line	0.70
Magnate & Syndicate Co., Ltd	0.70
Mahachai Food Processing Co., Ltd	*
May Ao Co., Ltd/May Ao Foods Co., Ltd	0.70
Meyer Industries Ltd	0.70
Namprik Maesri Ltd Part.	0.70
Narong Seafood Co., Ltd	0.70
National Starch and Chemical Thailand Ltd	0.70
Noble Marketing Co., Ltd	0.70
NR Instant Produce Co., Ltd	0.70
Oki Data Manufacturing (Thailand) Co., Ltd	0.70
Ongkorn Cold Storage Co., Ltd/Thai-Ger Marine Co., Ltd	0.70
Orion Electric Co., Ltd	0.70
Pacific Queen Co., Ltd	0.70
Penta Impex Co., Ltd	0.70
Pinwood Nineteen Ninety Nine	0.70
Pioneer Manufacturing (Thailand) Co., Ltd	0.70
Piti Seafoods Co., Ltd	0.70
Premier Frozen Products Co., Ltd	0.70
Preserved Food Specialty Co., Ltd	0.70
Protainer International Co., Ltd	0.70
Queen Marine Food Co., Ltd	0.70
Rayong Coldstorage (1987) Co., Ltd	0.70
S&D Marine Products Co., Ltd	0.70
S&P Aquarium	0.70
S&P Syndicate Public Company Ltd	0.70
S. Chaivaree Cold Storage Co., Ltd	0.70
S. Khonkaen Food Industry Public Co., Ltd and/or	*
S. Khonkaen Food Ind Public.	
SMP Foods Products Co., Ltd	0.70
Samui Foods Company Limited	0.70
Sea Bonanza Food Co., Ltd	0.70
Seafoods Enterprise Co., Ltd	0.70
Seafresh Fisheries/Seafresh Industry Public Co., Ltd	0.70
Siam Food Supply Co., Ltd	0.70
Siam Intersea Co., Ltd	0.70
Siam Marine Products Co. Ltd	0.70
Siam Marine Frozen Foods Co., Ltd	*
Siam Ocean Frozen Foods Co. Ltd	*
Siam Union Frozen Foods	0.70
Siamchai International Food Co., Ltd	0.70
Smile Heart Foods Co. Ltd	0.70
Southport Seafood Company Limited	0.70
Suntechthai Intertrading Co., Ltd	0.70
Surapon Nichirei Foods Co., Ltd	0.70
Surapon Seafoods Public Co., Ltd/Surapon Foods Public Co., Ltd/0.70.	
Surat Seafoods Co., Ltd.	
Suratthani Marine Products Co., Ltd	0.70
Suree Interfoods Co., Ltd	0.70
T.H.I. Group (Bangkok) Co., Ltd	0.70
T.P. Food Canning Ltd, Part.	0.70
T.S.F. Seafood Co., Ltd	0.70
Tanaya International Co., Ltd	0.70
Tanaya Intl.	0.70
Teppitak Seafood Co., Ltd	0.70
Tey Seng Cold Storage Co., Ltd	0.70

Manufacturer/exporter	Percent margin
Tep Kinsho Foods Co., Ltd	0.70
Thai Agri Foods Public Co., Ltd	0.70
Thai Frozen Foods Co., Ltd	0.70
Thai Lee Agriculture Co., Ltd	0.70
Thai Mahachai Seafood Products Co., Ltd	0.70
Thai Ocean Venture Co., Ltd	0.70
Thai Onono Public Co., Ltd	0.70
Thai Patana Frozen	0.70
Thai Prawn Culture Center Co., Ltd	0.70
Thai Royal Frozen Food Co. Ltd	0.70
Thai Spring Fish Co., Ltd	0.70
Thai Union Frozen Products Public Co., Ltd/0.70.	
Thai Union Seafood Co., Ltd.	
Thai Union Manufacturing Co., Ltd and/or Thai Union Mfg	*
Thai World Imp & Exp Co.	0.70
Thai Yoo Ltd, Part.	0.70
Thaveevong Industry Co., Ltd	0.70
The Siam Union Frozen Foods Co., Ltd	0.70
The Union Frozen Products Co., Ltd/Bright Sea Co., Ltd	0.70
Trang Seafood Products Public Co., Ltd	0.70
Transamut Food Co., Ltd	0.70
Tung Lieng Trdg	0.70
United Cold Storage Co., Ltd	0.70
V Thai Food Product	*
Wann Fisheries Co., Ltd	0.70
Xian-Ning Seafood Co., Ltd	0.70
Yeenin Frozen Foods Co., Ltd	0.70
YHS Singapore Pte	0.70
ZAFCO TRDG	0.70

* No shipments or sales subject to this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than the later of 30 days after the date of publication of this notice or one week after the issuance of the cost verification report for Pakfood. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. *Id.* The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

MRG and Pakfood reported the entered value for certain of their U.S. sales. We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of these sales. *See* 19 CFR 351.212(b)(1).

For the remainder of MRG's and Pakfood's U.S. sales, we note that these companies did not report the entered value for the U.S. sales in question. We will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. With respect to MRG's and Pakfood's U.S. sales of shrimp with sauce for which no entered value was reported, we will include the total quantity of the merchandise with sauce in the denominator of the calculation of the importer-specific rate because CBP will apply the per-unit duty rate to the total quantity of merchandise entered, including the sauce weight. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the companies which were not selected for individual review, we will calculate an assessment rate based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions. In situations where we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information but where use of a simple average does not yield the best proxy of the weighted-average margin relative to publicly available data, normally we will use the publicly available figures as a matter of

practice. *See Bearings from France,* 75 FR at 53663.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. *See* 751(a)(2)(C) of the Act.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.34 percent, the all-others rate made effective by the *Section 129 Determination.*[13] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–4978 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Preliminary Results of, and Partial Rescission of, the Antidumping Duty Administrative Review, and Intent Not To Revoke the Order, in Part

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

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on stainless steel bar ("SS Bar") from India for the period of review ("POR") February 1, 2009, through January 31, 2010. The Department initiated this review of Facor Steels Ltd./Ferro Alloys Corporation, Ltd. ("Facor"); Mukand, Ltd. ("Mukand"); India Steel Works, Limited ("India Steel"); and Venus Wire Industries Pvt. Ltd. ("Venus Wire") and its affiliates Precision Metals and Sieves Manufacturers (India) Private Limited ("Sieves"). Based on timely withdrawal of the request for review, the Department is rescinding the review with respect to India Steel.

We preliminarily determine Venus Wire, Mukand and Facor made sales of the subject merchandise at prices below normal value ("NV"). The Department also preliminarily determines that total adverse facts available ("AFA") is warranted for Mukand because it failed to cooperate to the best of its ability in this proceeding. Finally, we have preliminarily determined not to revoke the antidumping duty order on SS Bar from India with respect to SS Bar exported and/or sold by Venus Wire.

Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on appropriate entries. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* March 4, 2011.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg, Mahnaz Khan, Austin Redington, Scott Holland or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0588, (202) 482–0914, (202) 482–1664, (202) 482–1279 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department published in the **Federal Register** the antidumping duty order on SS Bar from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan,* 60 FR 9661 (February 21, 1995) ("the Order"). On February 1, 2010, the Department published a notice of opportunity to request an administrative review of the Order on SS Bar from India for the period February 1, 2009, through January 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 5037 (February 1, 2010).

On February 24, 2010, Venus Wire submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the Order with respect to Venus Wire's sales of the subject merchandise

[13] Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (Jan. 30, 2009) (*Section 129 Determination*).

to the United States. In this submission, Venus Wire also timely requested an administrative review of the Order for the POR. *See* Letter from Venus Wire requesting revocation and an administrative review, dated February 22, 2010, which is on file in the Central Records Unit ("CRU") in room 7046 in the main Department building.

On February 26, 2010, domestic interested parties Carpenter Technology Corp.; Crucible Specialty Metals, a division of Crucible Materials Corp.; Electralloy Co., a G.O. Carlson, Inc. company; and Valbruna Slater Stainless, Inc. (collectively, "Petitioners"), timely filed a request for administrative review of Venus Wire, Facor, Mukand, and India Steel, and their respective affiliates. *See* Petitioners' request for administrative review, dated February 26, 2010, on file in the CRU.

On March 30, 2010, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), we initiated an administrative review covering Venus Wire and its affiliates Precision Metal and Sieves; Facor; Mukand; and India Steel. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 15679 (March 30, 2010). On April 7, 2010, Petitioners timely withdrew their request for administrative review of India Steel.

On April 13, 2010, the Department issued antidumping duty questionnaires to Venus Wire, Mukand, and Facor. Venus Wire, Mukand, and Facor submitted timely filed responses to the antidumping questionnaire in May and June 2010. The Department issued supplemental questionnaires to Venus Wire, Mukand, and Facor to clarify or correct information contained in the initial questionnaire responses.

We received timely filed responses to supplemental questionnaires from Venus Wire (and its collapsed affiliates, *see* Affiliation section, below) from August 2010 through February 2011. We received timely filed responses to supplemental questionnaires from Mukand from July 2010 through February 2011. We received timely filed responses to supplemental questionnaires from Facor from June 2010 through February 2011.

On October 25, 2010, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than February 28, 2011, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). *See Stainless Steel Bar From India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 65449 (October 25, 2010).

Period of Review

The POR is February 1, 2009, through January 31, 2010.

Scope of the Order

Imports covered by the Order are shipments of SS Bar. SS Bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SS Bar includes cold-finished SS Bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.,* cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SS Bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SS Bar manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of the Order. *See* Memorandum from Team to Barbara E. Tillman, "Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling," dated May 23, 2005, which is on file in the CRU. *See also Notice of Scope Rulings,* 70 FR 55110 (September 20, 2005).

Rescission of the Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice of the requested review. Further, pursuant to 19 CFR 351.213(d)(1), the Department is permitted to extend this time if it is reasonable to do so.

Petitioners were the only party to request an administrative review of India Steel on February 26, 2010, and on April 7, 2010, Petitioners timely withdrew this request. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to India Steel.

Affiliation

Precision Metals

In the 2005–2006 antidumping duty administrative review of SS Bar from India, the Department determined that Venus Wire and Precision Metals were affiliated within the meaning of section 771(33) of the Act, and that these two companies should be treated as a single entity for the purposes of that administrative review. *See Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 72 FR 51595, 51596 (September 10, 2007) ("*2005–2006 Final Results*"). In the 2007–2008 and 2008–2009 antidumping duty administrative reviews of SS Bar from India, the Department again determined that these two companies should be treated as a single entity. *See Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review,* 74 FR 47198 (September 15, 2009) ("*2007–2008 Final Results*"); *see also Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review,* 75 FR 54090 (September 3, 2010) ("*2008–2009 Final Results*").

The Department re-examined Venus Wire's corporate affiliation relationship with Precision Metals for the instant administrative review. Because this relationship is unchanged from the *2005–2006 Final Results, 2007–2008 Final Results,* and *2008–2009 Final Results,* the Department continues to treat Venus Wire and Precision Metals as a single entity for the instant review. *See* Venus Wire's May 24, 2010 section A questionnaire response ("AQR") at A–2, 4–13. *See also* Memorandum from Austin Redington to the File, "Relationship of Venus Wire Industries Pvt. Ltd. and Precision Metals," dated

May 20, 2010, which is on file in the CRU.

Sieves

In the 2007–2008 and 2008–2009 administrative reviews, the Department determined that Venus Wire and Sieves are affiliated within the meaning of section 771(33) of the Act, and that these two companies should be treated as a single entity for purposes of those administrative reviews. *See 2007–2008 Final Results; see also 2008–2009 Final Results.*

The Department re-examined Venus Wire's corporate affiliation relationship with Sieves for the instant administrative review. Because this relationship is unchanged from the *2007–2008 Final Results* and *2008–2009 Final Results,* the Department continues to treat Venus Wire and Precision Metals as a single entity for the instant review. *See* Venus Wire's May 24, 2010 section AQR at A–2, 4–13. *See also* Memorandum from Austin Redington to the File, "Relationship of Venus Wire Industries Pvt. Ltd. and Sieves Manufacturers (India) Pvt. Ltd.," dated May 20, 2010, which is on file in the CRU.

Hindustan Inox (Formerly Hindustan Stainless)

In the 2008–2009 administrative review, Petitioners alleged that Hindustan Inox ("Hindustan"), formerly known as Hindustan Stainless, should be collapsed with Venus Wire. *See* Petitioners' June 12, 2009, and January 29, 2010, filings. After reviewing record information in that proceeding, the Department determined that because Hindustan was not a producer/exporter of SS Bar during that POR, it should not be collapsed with Venus Wire for the purposes of that administrative review. *See 2008–2009 Final Results.*

In the current administrative review, the Department re-examined Hindustan's operations and sales information. The Department determined that Hindustan was a producer/exporter of SS Bar during the instant POR. The Department also determined that, according to information presented in Venus Wire's and Hindustan's responses to the Department's questionnaires, Venus Wire and Hindustan are affiliated within the meaning of section 771(33) of the Act. *See* Venus Wire's section AQR at A–5–13; *see also* Hindustan's August 19, 2010 section AQR. The Department issued a memorandum announcing the collapsing of Venus Wire and Hindustan for the preliminary results and gave interested parties an opportunity to comment. *See* Memorandum to the File "Whether to Collapse Venus Wire Industries Pvt., Ltd. and Hindustan Inox in the Preliminary Results," dated July 20, 2010, which is on file in the CRU. No comments were received. Therefore, for these preliminary results, we find that Hindustan and Venus Wire are affiliated and for the purposes of this administrative review, should be treated as a single entity.

The collapsed entity of Venus Wire, Precision Metals, Sieves, and Hindustan is hereafter referred to as "Venus."

Verification

During December 2010, we verified the sales information provided by Venus in India using standard verification procedures, including examination of relevant sales and financial records, and selection of original documentation containing relevant information, as provided in section 782(i) of the Act. The Department reported its findings on January 20, 2011. *See* Memorandum to the File, "Verification of the Sales Response of Venus Wire Industries Pvt. Ltd. and Precision Metal in the Antidumping Duty Administrative Review of Stainless Steel Bar from India," dated January 20, 2011; Memorandum to the File, "Verification of the Sales Response of Hindustan Inox Limited in the Antidumping Duty Administrative Review of Stainless Steel Bar from India," dated January 20, 2011; and Memorandum to the File, "Verification of the Sales Response of Sieves Manufacturers (India) Pvt., Ltd. in the Antidumping Duty Administrative Review of Stainless Steel Bar from India" dated January 20, 2011. These reports are on file in the CRU.

Intent Not To Revoke, In Part

On February 22, 2010, Venus requested revocation of the Order as it pertains to its sales. On January 26, 2011, the Department requested quantity and value information for the one year period prior to the imposition of the Order. On February 3, 2011, Venus responded that it did not keep shipment records beyond eight years and, therefore, could not meet the Department's request. *See* February 3, 2011, letter from Venus to the Department.

On February 8, 2011, Petitioners commented that the Department should deny Venus's revocation request because it did not ship in commercial quantities to the United States following the imposition of the Order. Petitioners also argued that the request for revocation of the Order should not be granted because Venus is subject to antidumping and countervailing duty investigations in the European Union ("EU") and, therefore, would be likely to engage in unfair trading practices in other markets including the United States. On February 18, 2011, Venus responded that it sold in commercial quantities to the United States in all administrative reviews it had participated in since the imposition of the Order. Venus further argued that the antidumping and countervailing duty investigations in the EU should not be considered in determining the merit of a revocation request.

Under section 751(d)(1) of the Act, the Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth at 19 CFR 351.222. Under 19 CFR 351.222(b)(2)(i), the Department may revoke an antidumping duty order in part if it concludes that (A) an exporter or producer has sold the merchandise at not less than NV for a period of at least three consecutive years; (B) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV; and (C) the continued application of the antidumping duty order is no longer necessary to offset dumping. Section 351.222(b)(3) of the Department's regulations states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under 19 CFR 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

In accordance with 19 CFR 351.222(e)(1) a request for revocation of an order in part for a company previously found dumping must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than NV during the current review period and that, in the future, it will not sell at less than NV; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the company's agreement to reinstatement in the order if the Department concludes

that, subsequent to revocation, the company has sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). We preliminarily determine that the request dated February 22, 2010, from Venus meets all of the criteria under 19 CFR 351.222(e)(1).

However, with regard to the criteria of 19 CFR 351.222(b)(2)(i), our preliminary margin calculations show that Venus sold SS Bar at less than NV during the current review period. *See* "Preliminary Results of the Review" section below.

As such, we preliminarily find that Venus does not qualify for revocation.

Use of Facts Otherwise Available

Section 776(a)(1) and (2) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia,* necessary information is not on the record or an interested party (A) withholds information requested by the Department; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information which cannot be verified as provided by section 782(i) of the Act.

We have determined that the use of facts otherwise available is appropriate for the preliminary results with respect to Mukand because of Mukand's: 1) Repeated failure throughout this review to provide product-specific cost data by size; 2) failure to provide any meaningful explanation of why such data could not be provided; and 3) failure to provide factual information to support its claim that cost differences due to size were insignificant.

Normally, a respondent's reported product costs should reflect cost differences attributable to the different physical characteristics, as defined by the Department, to ensure that the product-specific costs used for the sales-below-cost test and constructed value ("CV") accurately reflect the corresponding product's physical characteristics. *See* sections 773(b)(1) and 773(e) of the Act. Similarly, the product-specific costs should incorporate differences in variable costs associated with the physical differences in the merchandise in accordance with 19 CFR 351.411(b) to account for the difference-in-merchandise adjustment.

For this administrative review, product size must be reflected in the cost-of-production ("COP") and the CV because sales prices are compared to production costs on a size-specific basis. These comparisons cannot accurately be made without knowing how COP varies with size. In addition, section 773(a)(6)(C)(iii) of the Act requires that we account for any differences attributable to physical differences between the subject merchandise and foreign like product if similar products are compared.

Control numbers ("CONNUMs") for SS Bar products, under this order and other orders on SS Bar, reflect six product characteristics (*i.e.,* general type of finish, grade, re-melting, type of final finish, shape, and size). Mukand produces SS Bar in a wide range of sizes, but has failed to provide COP differences for the physical characteristic of size.

Specifically, Mukand failed in its original and four supplemental responses [1] to provide unique product costs that account for the differences in the physical characteristic size, as defined by the Department. Mukand assigned the same per kilogram conversion costs to all products irrespective of the final size of the product produced. *See* cost database from Mukand's Section D questionnaire response dated June 11, 2010. That methodology fails to provide the Department with product-specific COP and CV information. In addition, it fails to provide the Department with information necessary to calculate a difference in merchandise adjustment to account for differences in physical characteristics when comparing sales of similar merchandise. As explained to Mukand in the first Section D supplemental questionnaire, "without accurate data for size, we cannot perform a reliable sales-below-cost test; we cannot calculate accurate CVs for use as normal value; nor can we make accurate price-to-price comparisons of similar merchandise." We issued Mukand four supplemental questionnaires requesting that it correct these errors, but it failed to do so. *See* supplemental questionnaires dated August 9, 2010, October 4, 2010, November 22, 2010, and January 21, 2011 ("Mukand's SQDs"). While we acknowledge that Mukand does not allocate cost to specific sizes in its normal books and records, we informed Mukand that it should use information reasonably available to the company to account for size-specific cost differences. We further instructed Mukand that if it believed that size did not contribute to cost differences between products, it should quantify and explain its reasons for not reporting a cost difference. In response, Mukand failed to provide costs differences for size, but did provide its reasoning as to why it considered the cost differences insignificant. However, Mukand's explanation does not support the position that cost differences for different sizes are insignificant. In addition, we gave Mukand the opportunity to provide factual information to show the significance or insignificance of cost differences associated with the different sizes of SS Bar it produced. Mukand again failed to do so. Accordingly, Mukand's failure to provide the requested data renders its response unusable for these preliminary results. Therefore, in light of Mukand's continued failure to provide requested information necessary to calculate accurate dumping margins in this case, in accordance with section 776(a) of the Act, we determine that the use of facts otherwise available with an adverse inference is appropriate for these preliminary results.

[1] Mukand submitted initial and supplemental Section D responses on June 11, 2010, August 31, October 26, and December 15, 2010, and February 10, 2011.

Adverse Facts Available

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103–316, Vol. 1, 103d Cong. (1994) ("SAA"), explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870; and, *e.g., Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review,* 72 FR 69663 (December 10, 2007). Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan,* 65 FR 42985 (July 12, 2000); *Antidumping*

Duties, Countervailing Duties, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (CAFC 2003) ("*Nippon*"). It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

The Federal Circuit has stated that, "while the adverse facts available standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping." *See Nippon,* 337 F.3d at 1373, 1382–83. The AFA standard, moreover, assumes that because respondents are in control of their own information, they are required to take reasonable steps to present information that reflects their experience for reporting purposes before the Department. Therefore, we find it appropriate to use an inference that is adverse to the company's interests in selecting from among the facts otherwise available.

In this case, we have determined that Mukand has not acted to the best of its ability in responding to the Department's request for size-specific cost information. In our supplemental questionnaires we repeatedly instructed Mukand to rely not only on its existing financial and cost accounting records, but on other information which would allow it to reasonably allocate its costs to the many different sizes of SS Bar products it produced. *See* Mukand's SQDs. It is standard procedure for the Department to request product-specific cost data and we routinely receive such information from respondents, as we did from the other respondents, Venus and Facor, in this case. *See* section D questionnaire responses dated June 4, 2010 for Facor, and dated June 14, 2010 for Venus. Even if a company does not calculate product-specific costs to the level of detail required by the Department in its normal financial and cost accounting records as is the case here, we require that the company account for such cost differences using information reasonably available to it. *See* section D questionnaire dated June 11, 2010 at D–25.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." In response to our numerous requests for product-specific cost data, Mukand maintained its position that it would not provide the requested data because cost differences related to size are insignificant and the company's accounting system does not track them. The Department repeatedly asked Mukand to support its claim that size-specific cost differences for SS Bar products are not significant. However, to date, Mukand has failed to provide the Department with any actual data to support its claim. As such, this case can be distinguished from *Polyethylene Terephthalate Film, Sheet and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review,* 76 FR 9745 (February 22, 2011), and accompanying Issues and Decision Memorandum at Comment 1, where the respondent provided an adequate explanation of why the cost differences for surface treatment was insignificant and provided actual data to support its claim.

Cooperation in an antidumping investigation requires more than a simple statement that a respondent cannot provide certain information from its previously prepared accounting records. If a party cannot provide certain information from its accounting records, then it may notify the Department that it is unable to submit this information in the form and manner requested but it must also provide explanation and suggest alternative forms in which it is able to submit the information. *See* section 782(c) of the Act. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey,* 65 FR 1127, 1132 (January 7, 2000). To meet that burden, a respondent must explain what steps it has taken to comply with the information request, and propose alternative methodologies for getting the necessary information. *See Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185, 1192 (Federal Circuit 1993). Mukand has failed to do either. Logically, at a minimum, in order to produce bars of different sizes, Mukand personnel would need to set the machine parameters to produce the specific size desired (*i.e.,* set the machine speed and the number of passes through the rolling stand). It is reasonable to expect that Mukand has manufacturing plans or engineering standards associated with the production of specific sizes of bar that could have been used to reasonably allocate costs to specific sizes. As Mukand continues to produce SS Bar, Mukand personnel could have also timed current production runs to provide rolling times for specific sizes, which could have been used as a reasonable basis for allocating costs to specific sizes. It is also reasonable to expect that Mukand does know the grade-specific, length-to-weight conversion factors for different sizes of bar with the engineering knowledge the company possesses to manufacture SS Bar. While Mukand's financial and cost-accounting records may not allocate unique costs to the different sizes of bar produced, the company could have developed a reasonable methodology to allocate costs to different sized products on a CONNUM-specific per-unit weight basis, using the company's normal cost-accounting records as a starting point to calculate CONNUM-specific costs. The Department repeatedly requested that Mukand look beyond its financial and cost-accounting records and select from a variety of available data using, for example, engineering studies, rolling mill processing times, production experience, relative length-to-weight conversion factors, or other production records for allocating costs to products on a CONNUM-specific per-unit weight basis. *See* Mukand's SQDs.

Although we provided Mukand with notice informing it of the consequences of its failure to respond fully to our antidumping questionnaire, Mukand's repeated failure throughout the review to provide size-specific cost data or to provide any meaningful explanation of why such data could not be provided, demonstrates that Mukand did not cooperate to the best of its ability. *See* Mukand's SQDs. Mukand has participated in previous segments of this Order and, thus, has experience in responding to the Department's requests for information and is well aware of the types of information the Department requires. *See e.g., Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review,* 63 FR 13622 (March 20, 1998). Moreover, Mukand is a large, sophisticated company that has the resources to gather the information requested by the Department in this review. Therefore, we find that an adverse inference is warranted in selecting facts otherwise available.

Where the Department applies an AFA rate because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 870. Section 776(c) of the Act provides that, when the Department relies on secondary information as facts available, it must, to the extent practicable,

corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870; *see also* 19 CFR 351.308(d). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics, and customs data as well as information obtained from interested parties during the particular proceeding. *Id.* Information from a prior segment of the proceeding constitutes secondary information. *Id.*

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part,* 69 FR 55581 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 18.

As AFA for Mukand, we have assigned a margin of 22.63 percent. This margin was calculated for Ambica Steels Limited ("Ambica") in the 2006 antidumping duty new shipper review and represents the highest calculated weighted-average margin determined for any respondent in any segment of this proceeding. *See Stainless Steel Bar from India: Final Results of Antidumping Duty New Shipper Review,* 72 FR 72671 (December 21, 2007). This rate was reliable when it was first used because it was calculated as the AFA rate for Ambica, based upon its own submitted information. *Id.* No additional information has been presented in the current review which calls into question the reliability of the information. The Federal Circuit has held that the Department "is permitted to use a 'common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'" *See KYD, Inc.* v. *United States,* 607 F.3d 760 (Fed. Cir. 2010) (quoting *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990)(emphasis deleted)).

With respect to relevance aspect of corroboration, we have used the transaction-specific margins we calculated for Venus and Facor in this review to determine, in the absence of any response from Mukand regarding its cost by size, whether the rate of 22.63 percent could bear a rational relationship to the commercial practices for sales of subject merchandise. Specifically, we analyzed transaction-specific margins of Venus and Facor to determine whether they made U.S. sales at prices that would result in transactional margins at or above 22.63 percent during the POR.

We found that the 22.63 percent margin falls within the range of individual transaction margins and that there was a significant number of sales in commercial quantities, made in the ordinary course of trade, by Facor and Venus, with margins near or exceeding 22.63 percent. *See* Memorandum from Mahnaz Khan to File regarding Preliminary Results Calculation Memorandum for Facor Steels, Ltd., at Attachment 2 (February 28, 2011) and Memorandum from Austin Redington to File regarding Preliminary Results Calculation Memorandum for Venus Wire Industries Pvt. Ltd., at Attachment 2 (February 28, 2011).

The number of U.S. transactions receiving a margin of 22.63 percent or greater is a representative figure whether it is measured by the number, value or quantity of the transactions. Because we find that both of the other Indian respondents in this administrative review made a significant percentage of sales of subject merchandise to the United States during the POR at prices that resulted in transaction-specific margins at or above 22.63 percent, we find that the rate of 22.63 percent bears a rational relationship to the commercial practices of sales of subject merchandise. Selecting a rate representing a substantial percentage of total U.S. sales transactions by Venus and Facor is in line with *PAM, S.p.A.* v. *United States,* 582 F.3d 1336, 1340 (Fed. Cir. 2009), where the court upheld an AFA rate even though only 0.5% of the respondent's total sales were above the selected rate. Moreover, there is no information on the record of this review that demonstrates that the rate selected is not an appropriate AFA rate for Mukand.

Finally, we find that the rate of 22.63 percent as AFA is sufficiently high to ensure that Mukand does not benefit from failing to cooperate in our review by refusing to respond to our questionnaire. *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part,* 73 FR 15132, 15133 (March 21, 2008).

Date of Sale

The Department normally will use the date of the invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if the Department is satisfied that a different date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i).

Venus and Mukand reported that the material terms of their U.S. and comparison market sales are established by the invoice date; thus, we are relying on the invoice date as the sale for these companies. Facor reported that the material terms of its comparison market sales are established by the invoice date, however, for its U.S. sales, the quantity and price are not determined until issuance of the excise invoice. Accordingly, we are relying on invoice date as date of sale for Facor's comparison market sales and excise date for its U.S. sales.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, we determined NV using home market sales at the same level of trade as the U.S. sales.

To determine whether home-market sales are at the same or different level of trade than U.S. sales, we examine stages in the marketing process and selling functions [2] along the chains of distribution between the producer and unaffiliated customers. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for export price ("EP") and comparison market sales (*i.e.,* NV based on either comparison market or third country prices),[3] we consider the starting prices before any adjustments. If the home-market sales are at a different level of

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level of trade(s) in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: Sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV level of trade of the sales from which we derive selling expenses, general and administrative expenses ("G&A") and profit for CV, where possible.

trade from that of a U.S. sale and the difference affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See, e.g., Stainless Steel Bar From Germany: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 5493 (February 5, 2004) (unchanged at the final).

(A) Venus

Our level of trade determination for Venus relies on the sales activities of the collapsed entity of Venus Wire, Precision Metal, Sieves, and Hindustan.

Venus reported one channel of distribution and a single level of trade in both the home market and the U.S. market. Venus reported that it sells to trading companies, distributors, and end users at this single level of trade in the home market, and to distributors, trading companies, and end users at the same level of trade in the U.S. market. Venus reported that its prices did not vary based on channel of distribution and/or customer category. *See* Venus Wire's section AQR at A–16.

We examined the information reported by Venus regarding its sales processes for its home market and U.S. market sales, including customer categories and the type and level of selling activities performed. *See* Venus Wire's section AQR at A–13–16. Specifically, we considered the extent to which sales process/marketing support, freight/delivery, inventory maintenance, and quality assurance/warranty service varied with respect to the different customer categories and channels of distribution across the markets.

Because there was only one channel of distribution and because we determined that the selling functions were similar for all home market sales, we found that the home market channel of distribution comprises one level of trade. We evaluated the U.S. channel of distribution and because the selling functions were identical for all U.S. sales, we found that it also comprises one level of trade.

Next, we compared the U.S. level of trade to the home market level of trade. Venus reported similar levels of freight/delivery in both the home market and U.S. market. *Id.* Further, Venus reported no inventory maintenance in either the home market or the U.S. market, and reported that it provided no warranty services in any of its channels of distribution. *Id.*

Based on our examination of the selling functions performed in the single channel of distribution in the U.S. market, we preliminarily find that Venus's sales in the home market and the United States were made at the same level of trade. Thus, we were able to match Venus's EP sales to sales at the same level of trade in the home market.

(B) Facor

Facor reported that it had two levels of trade in the home market: (1) Sales to end-users from its factory warehouse in Nagpur and from its distribution warehouses located in Chennai and Kolkata ("LOTH 1"), and (2) sales to retailers from its factory warehouse in Nagpur ("LOTH 2"). *See* Facor's section AQR dated May 24, 2010, at 17–19 and 21. Facor reported one level of trade in the U.S. market comprised of sales to retailers from its factory warehouse in Nagpur. *See* Facor's section AQR dated May 24, 2010, at 21. Facor requested a level of trade adjustment, claiming that its LOTH 1 "end-user" customers pay higher prices than its LOTH 2 "retail" customers. *Id.*

In support of its claim, Facor reported that it performs more selling activities for LOTH 1 end-users than it does for LOTH 2 end-users, including but not limited to, product chemical guarantees, product performance guarantees, a higher level of negotiation of sales terms, and timely delivery guarantees. *Id.* Facor states that sales negotiations take longer for LOTH 1 end-users, as opposed to LOTH 2 retailers. *See* Facor's section AQR dated May 24, 2010, at 24. Regarding inventory maintenance, Facor claims that SS Bar is held in inventory for longer periods of time for LOTH 1 end-users than for LOTH 2 end-users. *See* Facor's QR dated February 7, 2011 at 1. Facor reported that it uses third-party freight providers for its LOTH 1 sales for shipment from its Chennai and Kolkata warehouses. Further, for LOTH 1 sales, Facor generally advertises through its product brochures or displays. *See* Facor's QR dated August 9, 2010, at 17.

Facor reported that it does not necessarily perform additional sales functions for LOTH 2 relating to customers' specifications. *See* Facor's QR dated February 7, 2011, at 3. Facor states in its supplemental questionnaire response that sales negotiations for LOTH 2 retailers are less complicated than negotiations for LOTH 1 end-users because negotiations for LOTH 2 retailers are restricted to a single level. *See* Facor's QR dated February 7, 2011, at 3. Further, because LOTH 2 sales are not produced for specific customers, these sales have a shorter inventory carrying time. *See* Facor's QR dated February 7, 2011 at 1. Facor reported that it uses third-party freight providers for LOTH 2 sales from its Nagpur warehouse. *See* Facor's section AQR dated May 24, 2010, at 24. Similar to its LOTH 1 end-users, Facor generally advertises through its product brochures or displays for its LOTH 2 retailers. *See* Facor's QR dated August 9, 2010, at 17.

We examined the information regarding the types and levels of selling functions performed for LOTH 1 and LOTH 2. Specifically, we considered the extent to which sales process/marketing support, freight/delivery, inventory maintenance, and quality assurance/warranty service varied with respect to LOTH 1 and LOTH 2. Although Facor reported that sales negotiations take longer for end-users, Facor did not quantify the number of staff, nor did it provide information regarding the allocation of marketing resources dedicated to supporting its LOTH 1 end-users. Moreover, Facor provides a similar level of advertising for both LOTH 1 and LOTH 2 in the home market. The only difference in inventory maintenance reported by Facor was that LOTH 1 sales remained in inventory for longer periods of time than for LOTH 2. Days in inventory is not a meaningful measure of inventory selling activities, and we found no other record information that indicates there were significantly different inventory activities performed between the factory and distribution warehouses. Specifically, there does not appear to be a significant difference in the intensity of resources or staffing.

There also does not appear to be a significant difference in the level of intensity for freight/delivery between LOTH 1 and LOTH 2 because Facor reported that it contracts with third-party freight providers for delivery to its customers at both levels of trade. Our examination of the freight expenses reported by Facor indicates that the allocation of freight delivery expenses to customers at LOTH 1 and LOTH 2 are similar based on information reported in Facor's home market sales data. Finally, Facor reported that certain product guarantees, such as guarantees relating to chemical and mechanical properties and technical performance, are not incurred on every sale because established customers generally waive request for such guarantees. *See* Facor QR dated February 7, 2011, at 4. Therefore, we do not find that product guarantees are a significant difference between LOTH 1 and LOTH 2.

Accordingly, we preliminary determine that Facor did not experience significant differences in sales process/marketing support, freight/delivery, inventory maintenance and quality

assurance/warranty services between LOTH 1 and LOTH 2. Therefore, we preliminarily determine that a single level of trade exists in Facor's home market.

Facor reported EP sales to unaffiliated customers in the United States. *See* Facor's June 3, 2010, section C response. Facor reported a single channel of distribution and customer type to the U.S. market, direct sales to retailers. The Department compared the selling functions Facor performed in the single, home market level of trade with the selling functions performed for its U.S. sales. The Department found that Facor advertised its products similarly in both markets. Moreover, the Department found that, for both markets, Facor contracted with third-party freight providers to handle all freight arrangements. There were no differences in quality assurances or warranties between the markets. Moreover, there were no significant differences in the level of intensity of inventory maintenance between the markets.

Because the Department did not find any significant differences in sales process/customer support, quality assurances/warranty and inventory maintenance/warehousing between Facor's home and U.S. market sales, we preliminarily find that Facor's sales in the home market and the United States were made at the same level of trade. Thus, we matched Facor's EP sales to sales at the same, single level of trade in the home market.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold by Venus and Facor that are covered by the description in the "Scope of the Order" section, above, and were sold in the home market during the POR to be foreign-like products for purposes of determining appropriate product comparisons to U.S. sales.

We relied upon six criteria to compare U.S. sales of subject merchandise to comparison market sales of the foreign-like product: (1) General type of finish; (2) grade; (3) remelting; (4) type of final finishing operation; (5) shape; and (6) size. This is consistent with our practice in the original investigation. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From India,* 59 FR 39733, 39735 (August 4, 1994) (unchanged at the final). Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar product on the basis of the characteristics listed above. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market, we compared U.S. sales to CV.

Export Price

Venus and Facor reported that the subject merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States. Therefore, we based the U.S. price on EP, as defined in Section 772(a) of the Act.

(A) Venus

Venus's EP is based on the packed, delivered, duty paid price to unaffiliated purchasers in the United States. We adjusted the reported gross unit prices, where applicable, for discounts including weight shortages, short payments, or quality claims. Where appropriate, we made deductions for movement expenses, including freight incurred in transporting merchandise to the Indian port, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, freight incurred in the United States, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. *See* Memorandum from Austin Redington to File, re: "Venus Preliminary Results Calculation Memorandum," dated February 28, 2011 ("Venus Preliminary Sales Calculation Memo").

(B) Facor

Facor's EP is based on the prepaid destination delivery, duty paid or cost, insurance and freight price to unaffiliated purchasers in the United States. We made deductions for movement expenses from the reported gross unit price, in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, freight incurred in transporting merchandise to the Indian port, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, and U.S. customs duties. *See* Memorandum from Mahnaz Khan to File, re: "Facor Preliminary Results Calculation Memorandum," dated February 28, 2011 ("Facor Preliminary Sales Calculation Memo").

Duty Drawback

Section 772(c)(1)(B) of the Act provides that EP shall be increased by, among other things, "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that: (1) The "import duty and rebate are directly linked to, and dependent upon, one another;" and (2) "the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product." *Rajinder Pipes Ltd.* v. *United States,* 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999). Facor did not claim a duty drawback adjustment. Venus requested a duty drawback adjustment, but did not submit any information to support its request. Therefore, because Venus failed to meet the Department's requirements, we are denying Venus's request for a duty drawback adjustment for these preliminary results. *See* Venus Preliminary Sales Calculation Memo.

Home Market

Based on a comparison of the aggregate quantity of home-market and U.S. sales, and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by both respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise pursuant to section 773(a)(1) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP sales.

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.,* sales were made at arm's length prices. *See* 19 CFR 351.403(c). We excluded from our analysis sales to affiliated customers for consumption in the home market that we determined not to be at arm's length prices. To test whether these sales were made at arm's length prices, we compared them to the prices to unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices

charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's length prices. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002). We included in our calculation of NV those sales to affiliated parties that were made at arm's length prices. *See* Venus Preliminary Sales Calculation Memo and Facor Preliminary Sales Calculation Memo.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV for Venus based on the sum of its material and fabrication costs, selling, general and administrative ("SG&A") expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described below in the "Cost of Production Analysis" section of this notice, below. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Venus in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We did not calculate CV for Facor.

Calculation of Normal Value Based on Home Market Prices

We calculated NV based on packed, ex-factory or delivered prices to unaffiliated customers in the home market. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. When applicable, we also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

Cost Averaging Methodology

The Department's normal practice for respondents not in high inflationary economies is to calculate a single weighted-average cost for the entire POR unless this methodology results in inappropriate comparisons. *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review,* 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,* 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period and the Department's use of annual average costs in order to even out swings in production costs experienced by respondents over short periods of time). However, we recognize that possible distortions may result if we use our normal annual-average cost method during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing ("COM") recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the COP or CV during the same shorter averaging periods. *See Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review,* 75 FR 6627 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 6, and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review,* 73 FR 75398 (December 11, 2008) ("*SSPC from Belgium*"), and accompanying Issues and Decision Memorandum at Comment 4.

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-cost approach. *See SSPC from Belgium,* and accompanying Issues and Decision Memorandum at Comment 4. In the instant case, we analyzed the COM for selected highest sales volume SS Bar products. Based on our review of the record evidence, we did not find that Venus and Facor experienced significant changes in their respective COMs during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

Comparisons to Normal Value

To determine whether sales of SS Bar by Venus and Facor to the United States were made at less than NV, we compared EP to NV, as described in the "Export Price" and "Home Market" sections of this notice, above. Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product, where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section, below.

Cost of Production Analysis

Because we disregarded sales by Venus and Facor made at prices below the COP in the most recently completed review of SS Bar from India (*see 2008–2009 Final Results* (Venus) and *Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review,* 65 FR 48965 (August 10, 2000) (Facor)), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Venus and Facor may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Venus and Facor.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the materials and conversion costs for the foreign like product, plus amounts for G&A expense and interest expenses. We relied on home market sales and COP information provided by Venus and Facor in their respective questionnaire responses, except where noted below:

(A) Venus Wire, Sieves, Precision Metals, and Hindustan

1. We increased Venus's reported COM to include the unreconciled difference between the COM from its normal books and records and the reported COM.

2. We revised Venus's G&A expense rate to include the director

remuneration expense in the numerator and we reduced the cost of goods sold ("COGS") used as the denominator by the scrap revenue.

3. We revised Venus's financial expense rate by reducing the COGS denominator by the scrap revenue.

4. For a specific Sieves CONNUM that was missing variable overhead ("VOH") costs, we used the reported VOH from a surrogate CONNUM.

5. We increased Sieves's reported COM to account for inputs obtained from affiliates at less than market prices, and to include the unreconciled difference between the COM from its normal books and records and the reported COM.

6. We revised Sieves's G&A expense rate to include the director remuneration expense in the numerator and we reduced the COGS denominator by the scrap revenue.

7. We revised Sieves's financial expense rate by reducing the COGS denominator by the scrap revenue.

8. We revised Precision Metals's G&A expense rate by reducing the COGS denominator by the scrap revenue.

9. We revised Precision Metals's financial expense rate by reducing the COGS denominator by the scrap revenue.

10. We increased Hindustan's reported COM to include the unreconciled difference between the COM from its normal books and records and the reported COM.

For additional details, *see* Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Venus Wire Industries Pvt. Ltd.," dated February 28, 2011.

Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost tests for Venus and Facor revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. Therefore, we retained all such sales in our analysis and included them in determining NV. Our cost test for Venus and Facor further indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV. *See* Venus Preliminary Sales Calculation Memo; *see also* Facor Preliminary Sales Calculation Memo.

Currency Conversion

Pursuant to 19 CFR 351.415 and section 773A of the Act, we made currency conversions based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. *See* Import Administration Web site at: *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period February 1, 2009, through January 31, 2010.

Exporter/manufacturer	Margin (percent)
Venus Industries Pvt. Ltd./Precision Metal/Sieves Manufacturing (India) Pvt. Ltd./Hindustan Inox Ltd	1.32
Mukand, Ltd	22.63
Facor Steels Ltd./Ferro Alloys Corporation, Ltd	9.86

Public Comment

The Department will disclose the calculations performed within five days of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Issues raised in the hearing will be limited to those raised in the case briefs.

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, should be filed not later than 5 days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

The Department shall determine, and CBP will assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). The Department intends to issue appropriate assessment instructions for the companies subject to this review directly to CBP 15 days after publication of the final results of review.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by the respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales to an importer, we have calculated importer-specific assessment rates for the

merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the entered value or the estimated entered value, when entered value was not reported.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) ("*Assessment Policy Notice*"). This clarification will apply to entries of subject merchandise during the POR produced by Venus and Facor for which these companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of SS Bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent and is, therefore, *de minimis,* the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 12.45 percent, the "all others" rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915 (December 28, 1994). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protection order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–4981 Filed 3–3–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review

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

SUMMARY: The Department of Commerce "Department") is conducting the fifth administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam") for the period of review ("POR") February 1, 2009, through January 31, 2010. As discussed below, we preliminarily determine that sales have been made below normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* Insert date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, Paul Walker, or Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4031, (202) 482–0413, or (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on frozen warmwater shrimp from Vietnam. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) ("*Order*"). On February 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the period February 1, 2009, through January 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 5037 (February 1, 2010).

From February 26, 2010, through March 1, 2010, we received requests to conduct administrative reviews from the American Shrimp Processors Association ("ASPA"), the Louisiana Shrimp Association ("LSA"), the Domestic Producers,[1] and certain Vietnamese companies. The Department also received three requests for revocation. *See* "Requests for

[1] The Domestic Producers are the Ad Hoc Shrimp Trade Action Committee members: Nancy Edens; Papa Inc., Carolina Seafoods; Bosarge Boats, Inc.; Knights Seafood Inc.; Big Grapes, Inc.; Versaggi Shrimp Co.; and Craig Wallis.

Revocation, In Part" section, below. On April 9, 2010, the Department published in the **Federal Register** the notice of initiation of this administrative review. *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China,* 75 FR 18154 (April 9, 2010).

On September 14, 2010, the Department published in the **Federal Register** a notice extending the time period for issuing the preliminary results by 120 days. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 55740 (September 14, 2010).

On April 27, 2010, the Department received a letter from Vinh Hoan Corporation indicating that it made no shipments of subject merchandise during the POR. On May 7, 2010, the Department received letters from Gallant Ocean (Vietnam) Co., Ltd., Kien Cuong Seafood Processing Import Export Joint-Stock Company, Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd., Viet Hai Foods Co., Ltd. and its branch Nam Hai Foodstuff and Export Company Ltd., and Vinh Loi Import Export Company, indicating that they made no shipments of subject merchandise during the POR.

Of the 146 companies/groups upon which we initiated an administrative review, 23 companies submitted separate-rate certifications, seven companies submitted separate-rate applications, and six companies stated that they did not export subject merchandise to the United States during the POR. The Department addresses the review status of each grouping of companies below.

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that Gallant Ocean (Vietnam) Co., Ltd., Kien Cuong Seafood Processing Import Export Joint-Stock Company, Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd., Viet Hai Foods Co., Ltd. and its branch Nam Hai Foodstuff and Export Company Ltd., Vinh Loi Import Export Company, and Vinh Hoan Corporation made no shipments of subject merchandise during the POR of this administrative review. The Department received a no-shipment certification from the Vinh Hoan Corporation on April 27, 2010, and no-shipment certifications from Gallant Ocean (Vietnam) Co., Ltd., Kien Cuong Seafood Processing Import Export Joint-Stock Company, Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd., Viet Hai Foods Co., Ltd. and its branch Nam Hai Foodstuff and Export Company Ltd., and Vinh Loi Import Export Company on May 7, 2010. The Department issued no-shipment inquiries to U.S. Customs and Border Protection ("CBP") in January 2011, informing CBP of the no-shipment certifications from Gallant Ocean (Vietnam) Co., Ltd., Kien Cuong Seafood Processing Import Export Joint-Stock Company, Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd., Viet Hai Foods Co., Ltd. and its branch Nam Hai Foodstuff and Export Company Ltd., Vinh Loi Import Export Company, and Vinh Hoan Corporation during the POR, and asking CBP to provide any information that contradicted these certifications. We did not receive any response from CBP, thus indicating that there were no entries of subject merchandise into the United States exported by these companies. Additionally, the Department did not find any entries of subject merchandise into the United States in the CBP data on the record. Consequently, as none of these companies made exports of subject merchandise to the United States during the POR, we are preliminarily rescinding this administrative review with respect to these six companies. *See* 19 CFR 351.213(d)(3).

The Department initiated administrative reviews on Camau Seafood Fty., Grobest & I–Mei Industry Vietnam, and Seafoods and Foodstuff Factory Vietnam. Camau Frozen Seafood Processing Import Export Corporation ("Camimex"), Grobest & I–Mei Industrial Vietnam Co., Ltd., aka Grobest, and Thuan Phuoc Seafoods and Trading Corporation ("Thuan Phuoc Corp."), respectively, submitted separate rate certifications stating these are incorrect deviations of their names which were not used during the POR, and upon which the Department should rescind. Because there is no record evidence that these names are not valid names for other companies, we are preliminarily denying the rescission requests for these company names.

The Department initiated administrative reviews on Can Tho Animal Fisheries Product Processing Export Enterprise, Cuu Long Seaproducts Limited and Coastal Fisheries Development. Subsequently, Cafatex Fishery Joint Stock Corporation (aka "Cafatex"), Cuulong Seaproducts Company (aka "Cuulong Seapro") and Coastal Fisheries Development Corporation (aka "COFIDEC") submitted separate rate certifications. We note that COFIDEC, Cafatex and Cuulong Seapro have stated that Can Tho Animal Fisheries Product Processing Export Enterprise, Cuu Long Seaproducts Limited and Coastal Fisheries Development are derivations of names that they have used in the past. Because COFIDEC, Cafatex and Cuulong Seapro are exporters upon which we are conducting a review, we are including all names under which they have operated, regardless of whether a particular name was used during the POR. As a consequence, the Department finds it inappropriate to rescind on these previously used names.

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended ("the Act") directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On April 14, 2010, the Department placed on the record data obtained from CBP with respect to the selection of respondents, inviting comments from interested parties. *See* Letter from the Department to Interested Parties, Regarding: 2009–2010 Administrative Review of the antidumping Duty Order of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: CBP Data for Respondent Selection. On April 22, 2010, Domestic Producers, ASPA/LSA, and certain respondents provided comments on the Department's respondent selection methodology.

Because of the large number of exporters involved in this review, the Department determined to limit the number of respondents individually examined. On July 30, 2010, the Department issued its respondent selection memorandum. Based upon section 777A(c)(2)(B) of the Act, the Department selected Camimex, Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.) (collectively "the Minh Phu Group"), and Nha Trang Seaproduct Company ("Nha Trang Seafoods") for individual examination (hereinafter collectively "mandatory respondents") because they were the largest exporters, by volume, of subject merchandise during the POR. *See* July 30, 2010, Memorandum to James C. Doyle, through Scot T.

Fullerton, from Susan Pulongbarit, regarding: Selection of Respondents for the 2009–2010 Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam ("Respondent Selection Memo"). The Department sent antidumping duty questionnaires to Camimex, the Minh Phu Group, and Nha Trang Seafoods on August 3, 2010.

Camimex, the Minh Phu Group, and Nha Trang Seafoods submitted Section A Questionnaire Responses ("AQR") on August 24, 2010. Camimex submitted its Section C and Section D Questionnaire Responses on September 9, and September 10, 2010, respectively. The Minh Phu Group submitted its Section C and Section D Questionnaire Responses on September 23, and September 27, 2010, respectively. Nha Trang Seafoods submitted its Section C and Section D Questionnaire Responses on September 10, and September 21, 2010, respectively. The Department issued supplemental questionnaires to Camimex, the Minh Phu Group, and Nha Trang Seafoods between September 2010 and January 2011 to which all companies responded.

Collapsing

As indicated above, the Department selected Nha Trang Seafoods as one of the mandatory respondents in this investigation. In responding to the Department's antidumping questionnaire, Nha Trang Seafoods treated itself and its affiliates, NT Seafoods Corporation ("NT Seafoods"), Nha Trang Seafoods—F.89 Joint Stock Company ("Nha Trang Seafoods—F.89"), and NTSF Seafoods Joint Stock Company ("NTSF Seafoods"), as a single entity, *i.e.,* collapsed NT Seafoods, Nha Trang Seafoods—F.89, and NTSF Seafoods with itself. Nha Trang Seafoods based its decision to collapse NT Seafoods, Nha Trang Seafoods—F.89, and NTSF Seafoods with itself primarily on the fact that Nha Trang Seafoods is a significant shareholder of each of its affiliates and each of these companies produced subject merchandise and exported it to the United States through Nha Trang Seafoods.

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) Those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME country may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Hontex Enterprises, Inc.* v. *United States,* 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, if there is evidence of significant potential for manipulation between or among affiliates which produce and/or export similar or identical merchandise, whether or not all such merchandise is exported to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliates should be treated as one entity. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China,* 66 FR 22183 (May 3, 2001); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China,* 66 FR 49632 (September 28, 2001); and *Anshan Iron & Steel Co., Ltd.* v. *United States,* 27 C.I.T. 1234, 1246–47 (CIT 2003).

The decision of whether to collapse two or more affiliated companies is specific to the facts presented in the proceeding and is based on several considerations, including the structure of the collapsed entity, the level of control between and among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, the same separate rate will be assigned to each individual company that is part of the collapsed entity only if the facts, taken as a whole, support such a finding (*see* "Separate Rates" section below for further discussion).

Based on the reasons explained in the Collapsing Memo, and pursuant to 19 CFR 351.401(f), we have preliminarily collapsed NT Seafoods, Nha Trang Seafoods—F.89, NTSF Seafoods, and Nha Trang Seafoods because they are affiliated producers of the merchandise under consideration, and because there is a significant potential for manipulation of prices and production decisions between these parties. *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Doyle, Director, Office 9, AD/CVD Operations, from Susan Pulongbarit, International Trade Analyst, Office 9, AD/CVD Operations, Regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Whether to Collapse NT Seafoods Corporation, Nha Trang Seafoods—F.89 Joint Stock Company, and NTSF Seafoods Joint Stock Company with Nha Trang Seaproduct Company, dated February 28, 2011 ("Collapsing Memo"). For all relevant purposes, all subsequent references in this notice to the Nha Trang Seafoods Group will be to the collapsed entity that includes NT Seafoods, Nha Trang Seafoods—F.89, and NTSF Seafoods.

Surrogate Country and Surrogate Value Data

On August 20, 2010, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data.[2] On September 14, 2010, the Department extended the comment period for surrogate country selection from September 20, 2010, to October 4, 2010, and for surrogate value comments from October 20, 2010, to November 3, 2010. On October 4, 2010, the Department received comments on surrogate country selection from Domestic Producers. On November 3, 2010, the Department received information to value factors of production ("FOP") from ASPA/LSA, Domestic Producers and the mandatory respondents, Camimex, the Minh Phu Group, and Nha Trang Group. On November 12, 2010, the Department received a rebuttal response to Domestic Producers' surrogate value ("SV") submission from the mandatory respondents. The SVs placed on the record from ASPA/LSA and the mandatory respondents were obtained from sources in Bangladesh, whereas the SVs placed on the record by

[2] *See* the Department's Letter to All Interested Parties; Antidumping Duty Order on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated August 20, 2010.

Domestic Producers were obtained from sources in the Philippines.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[3] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10 and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Requests for Revocation, In Part

During the request for review period in this review, three respondents[4] requested that the *Order* be partially revoked with respect to them. Of the revocation companies, Camimex is a mandatory respondent, and the remaining two are separate rate respondents in this proceeding.

In their request for revocation, the revocation companies argued that each has maintained three consecutive years of sales at not less than NV, and that, as a result, they are eligible for revocation under section 751(d) of the Act and 19 CFR 351.222(b)(2).

We preliminarily determine not to revoke the *Order* with respect to the revocation companies that were not selected for individual review. The Act affords the Department broad discretion to limit the number of respondents selected for individual review when the large number of review requests makes the individual calculation of dumping margins for all companies under review impracticable. Specifically, section 777A(c)(2) of the Act provides that, if it is not practicable for the Department to make individual dumping margin determinations because of the large number of exporters or producers involved, the Department may determine margins for a reasonable number of exporters or producers. Although the Department's regulations set out rules and procedures for possible revocation of a dumping order, in whole or in part, based on an absence of dumping, it is silent on the applicability of this regulation when the Department has limited its examination under section 777A(c)(2) of the Act. The Department does not interpret the regulation as requiring it to conduct an individual examination of the non-selected revocation companies, or a verification of the companies' data, where, as here, the Department determined to limit its examination to a reasonable number of exporters in accordance with section 777A(c)(2)(B), and the non-selected revocation companies were not selected under this provision. Nothing in the regulation requires the Department to conduct an individual examination and verification when the Department has limited its review, under section 777A(c)(2). As explained above, the non-selected revocation companies were not selected for individual review because, pursuant to 777A(c)(2)(B) of the Act, the Department selected the three largest exporters, by volume. *See* Respondent Selection Memo. Thus, because we have not selected the non-selected revocation companies for individual examination, we preliminarily determine not to revoke the *Order* with respect to these companies.

However, the non-selected revocation companies filed timely separate-rate certifications, as evidence of each company's continued eligibility for a separate rate. Thus, the Department considers the non-selected revocation companies to be cooperative respondents eligible for a separate rate.

Furthermore, with respect to Camimex's request for revocation, as a mandatory respondent in this review, we preliminarily determine not to revoke the *Order*. In its request for revocation, Camimex argued that, with the completion of this review, it would have maintained three consecutive years of sales at not less than NV. Camimex argued that, as a result of three consecutive years of sales at not less than NV, it is eligible for revocation under section 751(d)(1) of the Act and 19 CFR 351.222(b)(2). However, for these preliminary results, based on sales

[3] "Tails" in this context means the tail fan, which includes the telson and the uropods.

[4] Camimex, Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest") and Phuong Nam Foodstuff Corp. ("Phuong Nam") (collectively, the "revocation companies").

and production data provided by Camimex for the fifth administrative review, the Department has calculated a (non-*de minimis*) positive margin for Camimex. Therefore, under 751(d)(1) of the Act and 19 CFR 351.222(b)(2), we have preliminarily determined not to revoke the *Order* with respect to Camimex.

Verification

Pursuant to 19 CFR 351.307(b)(iv), between December 13, and December 18, 2010, the Department conducted a verification of Cam Ranh Seafoods Processing Enterprise Pte.'s ("Cam Ranh") separate rate status and Camimex's sales and FOPs. *See* Memorandum to the File through Paul Walker, Acting Program Manager, Office 9, from Jerry Huang, International Trade Analyst, "Verification of the Cam Ranh Seafoods Processing Enterprise Pte. Separate Rate Response in the 2009–10 Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam", dated March 8, 2010; Memorandum to the File through Paul Walker, Acting Program Manager, Office 9, from Jerry Huang, International Trade Analyst, "Verification of the Sales and Factors of Production Response Camimex in the 2009–10 Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam", dated March 8, 2010.

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission and Request for Revocation, in Part, of the Fourth Administrative Review,* 75 FR 12206 (March 15, 2010) (unchanged in final results). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated the NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See, e.g., Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries.* 70 FR 17233 (April 5, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006) ("*Diamond Sawblades*"). It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See, e.g., Diamond Sawblades,* 71 FR at 29307. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585, 22586–87 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

In addition to the three mandatory respondents, Camimex, the Minh Phu Group, and Nha Trang Seafoods Group, the Department received separate rate applications or certifications from the following 20 companies ("Separate-Rate Applicants"): Amanda Foods (Vietnam) Limited; Bac Lieu Fisheries Joint Stock Company; C.P. Vietnam Livestock Corporation; Cafatex Fishery Joint Stock Corporation, aka Cafatex Corp.; Cadovimex Seafood Import-Export and Processing Joint Stock Company, aka CADOVIMEX–VIETNAM; Ca Mau Seafood Joint Stock Company, aka Seaprimexco Vietnam; Camranh Seafoods and Branch of Cam Ranh; Can Tho Import Export Fishery Limited Company, aka CAFISH; CATACO Sole Member Limited Liability Company, aka CATACO; Coastal Fisheries Development Corporation, aka COFIDEX; Cuulong Seaproducts Company, aka Cuulong Seapro; Danang Seaproducts Import Export Corporation, aka Seaprodex Danang and its branch Tho Quang Seafood Processing and Export Company; Grobest & I-Mei Industrial Vietnam Co., Ltd., aka Grobest; Investment Commerce Fisheries Corporation, aka INCOMFISH; Kim Anh Company, Limited; Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco; Minh Hai Joint-Stock Seafoods Processing Company, aka Seaprodex Minh Hai; Ngoc Sinh Private Enterprise and its branch, Ngoc Sinh Seafoods Processing and Trading Enterprise, aka Ngoc Sinh Seafoods; Nhat Dhuc Co., Ltd.; Nha Trang Fisheries Joint Stock Company, aka Nha Trang Fisco; Phu Cuong Jostoco Seafood Corporation; Phuong Nam Foodstuff Corp., aka Phuong Nam Co., Ltd.; Sao Ta Foods Joint Stock Company, aka FIMEX VN; Soc Trang Seafood Joint Stock Company, aka STAPIMEX; Thuan Phuoc Seafoods and Trading Corporation; UTXI Aquatic Products Corporation, aka UTXICO; and Viet Hai Seafood Co., Ltd., a/k/a Vietnam Fish One Co., Ltd. However, 90 companies did not submit either a separate-rate application or certification.[5] Therefore, because these companies did not demonstrate their eligibility for separate rate status, they remain preliminarily included as part of the Vietnam-wide entity.

Additionally, we note that some of the Separate-Rate Applicants requested separate rate status for various names which were not included on their business license.[6] Because these names (1) have not been granted separate-rate status in a previous granting period, and (2) do not appear on the business license submitted to the Department, and therefore are not recognized as representing the same entity, we are preliminarily not including these names on the lists of those which separate rate status applies.[7]

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining

[5] *See* Appendix 1.

[6] *See* Appendix II.

[7] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47191 (September 15, 2009) ("*3rd AR Final*") and accompanying Issues and Decision Memorandum at Comment 17.

whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. The evidence provided by Camimex, the Minh Phu Group, Nha Trang Seafoods Group, and the Separate-Rate Applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See, e.g.,* Camimex's AQR at Exhibit A–1, the Minh Phu Group's AQR at Exhibit 1, Nha Trang Seafoods Group's AQR at Exhibit A–1.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Camimex, the Minh Phu Group, Nha Trang Seafoods Group, and the Separate-Rate Applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue. *See, e.g.,* Camimex's AQR at 2–15 and Exhibit A–1, the Minh Phu Group's AQR at 3–26 and Exhibit A–1, Nha Trang Seafoods Group's AQR at 3–16 and Exhibit A–1. Therefore, the Department preliminarily finds that Camimex, the Minh Phu Group, Nha Trang Seafoods Group, and the Separate-Rate Applicants have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Separate Rate Calculation

For exporters subject to administrative review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on facts available.[8] Consequently, consistent with our practice, we have preliminarily established a margin for the separate rate respondents based on the rates we calculated for the two mandatory respondents that received a calculated margin. We note that it is the Department's practice to calculate the rate based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010) ("*Ball Bearings*"). Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we have calculated the separate rate based on a simple average of Camimex and the Minh Phu Group's margins. Following these preliminary results, the Department intends to request that the mandatory respondents provide the Department with publicly-ranged quantities of their reported U.S. transactions.

Vietnam-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rates application or certification. The separate-rate certification and separate-rate applications were available at: *http://ia.ita.doc.gov/nme/nme-sep-rate.html.*

We have preliminarily determined that 90 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the Vietnam-wide entity. In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters and producers." *See* 19 CFR 351.107(d). As explained above in the "Separate Rates" section, all companies within Vietnam are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities. *See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003). In this regard, we note that no party has submitted evidence of the proceeding to demonstrate that such government influence is no longer present or that our treatment of the NME entity is otherwise incorrect. Therefore, we are assigning the entity's current rate of 25.76%, the only rate ever determined for the Vietnam-wide entity in this proceeding.

Surrogate Country

When the Department conducts an antidumping administrative review of imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the

[8] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8279 (February 13, 2008) (unchanged in final results).

Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country, except for labor. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in Memorandum to the File through Paul Walker, Acting Program Manager, Office 9 from Jerry Huang, International Trade Analyst, Office 9; 2009–2010 Antidumping Duty Administrative Reviews of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated February 28, 2011 ("Surrogate Value Memorandum").

On August 20, 2010, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing FOPs. On October 4, 2010, the Department received comments from the Domestic Producers and mandatory respondents regarding surrogate country. The Domestic Producers submitted surrogate country comments suggesting that the Department select the Philippines as the surrogate country and the mandatory respondents submitted surrogate country comments suggesting that the Department select Bangladesh as the surrogate country.

On November 3, 2010, ASPA/LSA, Domestic Producers, and the mandatory respondents submitted SV data. On November 12, 2010, the Department received a rebuttal response to the Domestic Producers' SV submission from the mandatory respondents.

Pursuant to its practice, the Department received a list of potential surrogate countries from Import Administration's Office of Policy ("OP").[9] The OP determined that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia were at a comparable level of economic development to Vietnam. *See* Surrogate Country List. The Department considers the six countries identified by the OP in its Surrogate Country List as "equally comparable in terms of economic development." *Id.* Thus, we find that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia are all at an economic level of development equally comparable to that of Vietnam. We note that the Surrogate Country List is a non-exhaustive list of economically comparable countries. Moreover, we find that Egypt, Indonesia, and the Philippines are both economically comparable to Vietnam and significant producers of the subject merchandise. We also note that the record does not contain publicly available SV factor information Pakistan, India, or Sri Lanka.

With regard to Indonesia, the record contains publicly available surrogate factor value information for some factors. The Minh Phu Group, Nha Trang Seafoods Group, and Camimex provided data for both Indonesia and Bangladesh from a study conducted by the Network of Aquaculture Centres in Asia-Pacific ("NACA"), an intergovernmental organization affiliated with the United Nation's ("UN") Food and Agricultural Organization ("FAO"). However, unlike the Bangladeshi data within the NACA study, the Indonesian shrimp data is limited and does not satisfy as many factors of the Department's data selection criteria (*e.g.,* broad-market average). Thus, Indonesia is not the most appropriate surrogate country for purposes of this review.

With regard to the Philippines, the record contains publicly available surrogate factor value information for all FOPs. Domestic Producers provided shrimp data for the Philippines from the *2009 Fisheries Situationer,* published by the Philippines Bureau of Agricultural Statistics ("BAS"). Dissimilar to the Bangladeshi data within the NACA study, the Philippine shrimp data is limited and does not satisfy as many factors of the Department's data selection criteria. Specifically, we note that the *2009 Fisheries Situationer* contains no count-size specific data. In prior administrative reviews, the Department found that count-size specific data is important in calculating accurate dumping margins, and rejected shrimp SVs with limited count sizes. *See 3rd AR Final* at Comment 6. Thus, the Philippines is not the most appropriate surrogate country for purposes of this review.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.[10] As a general matter, the Department prefers to use publicly available data representing a broad-market average to value SVs. *Id.* The Department notes that the value of the main input, head-on, shell-on shrimp, is a critical FOP in the dumping calculation as it accounts for a significant percentage of NV. Moreover, the ability to value shrimp on a count-size basis is a significant consideration with respect to the data available on the record, as the subject merchandise and the raw shrimp input are both sold on a count-size specific basis.

The Bangladeshi shrimp values within the NACA study are compiled by the UN's FAO from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors. *See* Surrogate Value Memorandum. The Bangladeshi shrimp values within the NACA study are publicly available, represent a broad-market average, are product-specific, count-size-specific, contemporaneous and represent actual transaction prices. Regarding the Philippine data, BAS is unclear in the methodology it used to gather the average price for black tiger shrimp, whether the price is calculated from actual transaction prices, and the timeframe for data collection. Therefore, with respect to the data considerations, because the record contains shrimp values for Bangladesh that better meet our selection criteria than the Philippine source, we are selecting Bangladesh as the surrogate country.

In this regard, given the above-cited facts, we find that the information on the record shows that Bangladesh is an appropriate surrogate country because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data for surrogate valuation purposes.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.[11]

[9] *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9: Request for a List of Surrogate Countries for a Antidumping Duty Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated May 15, 2009 ("Surrogate Country List").

[10] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews,* 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 2A.

[11] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information

Date of Sale

Camimex, the Minh Phu Group, and Nha Trang Seafoods Group reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. The Department preliminarily determines that the invoice date is the most appropriate date to use as Camimex, the Minh Phu Group, and Nha Trang Seafoods Group's date of sale, in accordance with 19 CFR 351.401(i).[12]

Fair Value Comparisons

To determine whether sales of certain frozen warmwater shrimp to the United States by Camimex, the Minh Phu Group, and Nha Trang Seafoods Group were made at less-than-fair-value, the Department compared the export price ("EP") to NV, as described in the "U.S. Price," and "Normal Value" sections below.

U.S. Price

A. Export Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for sales to the United States from Camimex, Nha Trang Seafoods Group, and some of the Minh Phu Group's sales, because the first sale to an unaffiliated party was made before the date of importation. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on SVs. Additionally, for international freight provided by an ME provider and paid in an ME currency, we used the actual cost per kilogram of the freight. *See* Surrogate Value Memorandum for details regarding the SVs for movement expenses.

B. Constructed Export Price

For the majority of the Minh Phu Group's sales, we based U.S. price on constructed export price ("CEP") in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by its U.S. affiliate to unaffiliated purchasers in the United States. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Vietnam service providers or paid for in Vietnamese Dong, we valued these services using SVs (*see* "Factors of Production" section below for further discussion). For those expenses that were provided by an ME provider and paid for in ME currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for all of the mandatory respondents, *see* Memorandum to the File, from Paul Walker, Acting Program Manager, Office 9, 2009–2010 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: MPG Program Analysis for the Preliminary Determination, dated February 28, 2011.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOPs methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR, except as noted above. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi SVs. In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's ("CAFC") decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[13] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[14] Based on the existence of these subsidy programs that were generally available

submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[12] *See also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

[13] *See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong.,* 2nd Sess. (1988) ("*OTCA 1988*") at 590.

[14] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *see Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; *see Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries.[15] Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For further detail, *see* Surrogate Value Memorandum.

Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Bangladeshi import-based SVs or in calculating ME input values. In instances where an ME input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based SVs to value the input.

The Department notes that Domestic Producers submitted Philippine shrimp values and the mandatory respondents submitted Bangladeshi shrimp values with which to value the main input, raw shrimp. Domestic Producers submitted Philippine shrimp values obtained from the January–December 2009 *Fisheries Situationer* published by the Philippines Department of Agriculture Bureau of Agricultural Statistics. As stated above, the Minh Phu Group, Nha Trang Seafoods Group, Grobest, and Camimex submitted data contained in the NACA study compiled by the UN's FAO.

As stated above, the Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. Domestic Producers' submitted shrimp value from the *Fisheries Situationer,* although publicly available, is not count-size specific. As noted above, the shrimp values within the NACA study are compiled from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors, are count-specific, and publicly available. Therefore, to value the main input, head-on, shell-on shrimp, the Department used data contained in the NACA study.[16]

The Department used United Nations ComTrade Statistics, provided by the UN Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi SV data.[17] The data represents cumulative values for the calendar year 2007, for inputs classified by the Harmonized Commodity Description and Coding System number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries. Import statistics from countries that the Department has determined to be countries which subsidized exports (*i.e.,* Indonesia, South Korea, Thailand, and India) and imports from unspecified countries also were excluded in the calculation of the average value. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004). Lastly, the Department has also excluded imports from Bangladesh into Bangladesh because there is no evidence on the record regarding what these data represent (*e.g.,* re-importations, another category of unspecified imports, or the result of an error in reporting). Thus, these data do not represent the best available information upon which to rely for valuation purposes. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, SVs that are not contemporaneous with the POR using the wholesale price index ("WPI") for the subject country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof From the People's Republic of China,* 69 FR 29509 (May 24, 2004). However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POR with which to value factors could not be obtained, SVs were adjusted using the Consumer Price Index ("CPI") rate for Bangladesh, or the WPI for India or Indonesia (for certain SVs where Bangladeshi data could not be obtained), as published in the International Financial Statistics of the International Monetary Fund. We made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchange rates posted on the Import Administration Web site (*http://www.trade.gov/ia/*). *See* Surrogate Value Memorandum.

The Department used UN ComTrade to value the raw material and packing material inputs that Camimex, the Minh Phu Group, and Nha Trang Seafoods Group used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all SVs for respondents, *see* Surrogate Value Memorandum.

On May 14, 2010, the CAFC in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing the respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to Vietnam and that are significant producers of comparable merchandise.

For the preliminary results of this administrative review, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to Vietnam, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Value Memorandum. The Department calculated a simple average industry-specific wage rate of $1.09 for these preliminary results. Specifically, for this review, the Department has

[15] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

[16] For a detailed explanation of the Department's valuation of shrimp, *see* Surrogate Value Memorandum.

[17] This can be accessed online at: *http://www.unstats.un.org/unsd/comtrade/.*

calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to Vietnam and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 ("Manufacture of Food Products and Beverages") to be the best available wage rate SV on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to Vietnam and are significant producers of comparable merchandise: Egypt, Indonesia, and the Philippines. For further information on the calculation of the wage rate, *see* Surrogate Value Memorandum.

We valued electricity using data from the Bangladesh Ministry of Power, Energy, & Mineral Resources. This information was published on their Power Division's website. *See* Surrogate Value Memorandum.

We valued water using 2007 data from the Asian Development Bank. We inflated the value using the POR average CPI rate. *Id.*

We valued diesel using data published by the World Bank in "Bangladesh: Transport at a Glance," published in June 2006. We inflated the value using the POR average CPI rate. *Id.*

To value truck freight and river freight, we used data published in *2008 Statistical Yearbook of Bangladesh* published by the Bangladesh Bureau of Statistics. We inflated the value using the POR average CPI rate. *Id.*

To value marine insurance, the Department used rates from RJG Consultants. These rates are for sea freight from the Far East Region. *Id.*

We valued warehouse/cold storage rates published in an article on tropical-seeds.com in July 1997. We inflated the value using the POR average CPI rate. *Id.*

We valued containerization using information previously available on the Import Administration website. We inflated the value using the POR average WPI rate. *Id.*

The Department valued terminal lift charges using data from the Web sites *http://www.oocl.com/bangladesh/eng/localinformation/localsurcharges/?site=bangladesh&lang=eng* and *http://www.srinternational.com/standard_containers.htm*. We inflated the value using the POR average WPI rate. *See* Surrogate Value Memorandum.

We valued the by-product using shell scrap values from the Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Christian Hughes and Adina Teodorescu, Case Analysts, subject: Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/00 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01. We inflated the value using the POR average WPI rate. *Id.*

To value factory overhead, selling, general, and administrative expenses, and profit, we used the simple average of the 2009–2010 financial statement of Apex Foods Limited and the 2008–2009 financial statement of Gemini Seafood Limited, both of which are Bangladeshi shrimp processors. *See* Surrogate Value Memorandum, at Exhibit 8.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Simple average margin (percent)
Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX") aka. Camimex aka. Camau Seafood Factory No. 4 aka. Camau Seafood Factory No. 5 aka. Camau Frozen Seafood Processing Import & Export aka. Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX–FAC 25) aka. Frozen Factory No. 4. Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX") aka. Camimex aka. Camau Seafood Factory No. 4 aka. Camau Seafood Factory No. 5.	1.36
Minh Phu Group: Minh Phat Seafood Co., Ltd., aka. Minh Phat Seafood aka. Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) aka. Minh Phu Seafood Corp. aka. Minh Phu Seafood Corporation aka. Minh Qui Seafood aka. Minh Qui Seafood Co., Ltd. Minh Phu Seafood Pte aka. Minh Phat aka. Minh Qui.	1.67
Nha Trang Seafoods Group: Nha Trang Seaproduct Company ("Nha Trang Seafoods") aka. Nha Trang Seafoods aka. Nha Trang Seaproduct Company Nha Trang Seafoods aka. NT Seafoods Corporation ("NT Seafoods").	*de minimis*

Exporter	Simple average margin (percent)
Nha Trang Seafoods—F.89 Joint Stock Company (“Nha Trang Seafoods—F.89”). aka. NTSF Seafoods Joint Stock Company (“NTSF Seafoods”).	
Amanda Foods (Vietnam) Limited (“Amanda Foods”)	1.52
Bac Lieu Fisheries Company Limited, aka. Bac Lieu Fisheries Company Limited (“Bac Lieu”) aka. Bac Lieu Fisheries Joint Stock Company aka. Bac Lieu Fisheries Limited Company aka. Bac Lieu Fisheries Company Limited aka. Bac Lieu Fis.	1.52
C.P. Vietnam Livestock Company Limited aka. C.P. Vietnam Livestock Corporation (“C.P. Vietnam”) aka. C.P. Vietnam Livestock Corporation.	1.52
Cadovimex Seafood Import-Export and Processing Joint Stock Company (“CADOVIMEX–VIETNAM”) aka. Cadovimex-Vietnam aka. Cai Doi Vam Seafood Import-Export Company (“Cadovimex”) aka. Cai Doi Vam Seafood Import-Export Company (Cadovimex) aka. Cai Doi Vam Seafood aka. Cai Doi Vam Seafood Im-Ex Company (Cadovimex) aka. Cai Doi Vam Seafood Processing Factory aka. Caidoivam Seafood Company (Cadovimex) aka. Caidoivam Seafood Im-Ex Co.	1.52
Cafatex Fishery Joint Stock Corporation (“Cafatex Corp.”) aka. Cafatex Fishery Joint Stock Corporation (“CAFATEX CORP.”) aka. Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka. Cafatex, aka. Cafatex Vietnam, aka. Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho, aka. Cas, aka. Cas Branch, aka. Cafatex Saigon, aka. Cafatex Fishery Joint Stock Corporation, aka. Cafatex Corporation, aka. Taydo Seafood Enterprise aka. Cafatex Corp. aka. Cafatex Corporation.	1.52
Cam Ranh Seafoods Processing Enterprise Company (“Camranh Seafoods”) aka. Camranh Seafoods.	1.52
Can Tho Agricultural and Animal Products Import Export Company (“CATACO”) aka. Can Tho Agricultural Products aka. CATACO aka. Can Tho Agricultural and Animal Products Imex Company.	1.52
Can Tho Import Export Fishery Limited Company (“CAFISH”).	1.52
Coastal Fishery Development aka. Coastal Fisheries Development Corporation (“Cofidec”) aka. Coastal Fisheries Development Corporation (Cofidec) aka. COFIDEC aka. Coastal Fisheries Development Corporation aka. Coastal Fisheries Development Co. aka. Coastal Fisheries Development Corp.	1.52
Cuulong Seaproducts Company (“Cuu Long Seapro”) aka. Cuu Long Seaproducts Limited (“Cuulong Seapro”) aka. Cuulong Seapro aka. Cuulong Seaproducts Company (“Cuulong Seapro”) aka. Cuu Long Seaproducts Company (“Cuu Long Seapro”) aka. Cuu Long Seaproducts Company aka. Cuu Long Seapro aka. Cuulong Seaproducts Company (“Cuu Long Seapro”) aka. Cuu Long Seaproducts Limited (Cuulong Seapro) aka. Cuulong Seapro aka. Cuulong Seaproduct Company.	1.52

Exporter	Simple average margin (percent)
Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) aka. Danang Seaproducts Import Export Corporation aka. Danang Seaproduct Import-Export Corporation aka. Danang Seaproducts Import Export aka. Tho Quang Seafood Processing & Export Company aka. Seaprodex Danang aka. Tho Quang Seafood Processing and Export Company aka. Tho Quang aka. Tho Quang Co.	1.52
Grobest & I–Mei Industrial Vietnam, aka. Grobest, aka. Grobest & I–Mei Industrial (Vietnam) Co., Ltd. Grobest & I–Mei Industrial (Vietnam) Co., Ltd. (“Grobest”).	1.52
Investment Commerce Fisheries Corporation (“Incomfish”) aka. Incomfish aka. Investment Commerce Fisheries Corp., aka. Incomfish Corp., aka. Incomfish Corporation aka. Investment Commerce Fisheries aka. Investment Commerce Fisheries Corporation aka. Incomfish Corporation.	1.52
Kim Anh Company Limited (“Kim Anh”).	1.52
Minh Hai Export Frozen Seafood Processing Joint Stock Company aka ..... Minh Hai Jostoco aka. Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostoco”) aka. Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”) aka. Minh Hai Export Frozen Seafood Processing Joint-Stock Company aka. Minh Hai Joint Stock Seafood Processing Joint-Stock Company aka. Minh Hai Export Frozen Seafood Processing Joint-Stock Co., aka. Minh-Hai Export Frozen Seafood Processing Joint-Stock Company.	1.52
Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) aka. Sea Minh Hai aka. Minh Hai Joint-Stock Seafoods Processing Company aka. Seaprodex Minh Hai aka. Seaprodex Min Hai aka. Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.) aka. Seaprodex Minh Hai Factory aka. Seaprodex Minh Hai Factory No. 69 aka. Seaprodex Minh Hai Workshop 1 aka. Seaprodex Minh Hai-Factory No. 78 aka. Workshop I Seaprodex Minh Hai.	1.52
Minh Hai Sea Products Import Export Company (“Seaprimex Co”) aka. Ca Mau Seafood Joint Stock Company (“SEAPRIMEXCO”) aka. Seaprimexco Vietnam aka. Seaprimexco aka. Ca Mau Seafood Joint Stock Company (“Seaprimexco”) aka. Minh Hai Seaproducts Import Export Corporation aka. Seaprimexco aka. Minh Hai Seaproducts Co Ltd. (Seaprimexco) aka. Ca Mau Seafood Joint Stock Company (“Seaprimexco Vietnam”).	1.52
Ngoc Sinh Private Enterprise aka. Ngoc Sinh Seafoods aka. Ngoc Sinh Seafoods Processing and Trading Enterprise aka. Ngoc Sinh Fisheries aka. Ngoc Sinh Private Enterprises aka. Ngoc Sinh Seafoods Processing and Trading Enterprises aka. Ngoc Sinh aka. Ngoc Sinh Seafood Processing Company aka. Ngoc Sinh Seafoods (Private Enterprise).	1.52
Nhat Duc Co., Ltd. Nhat Duc Co., Ltd. (“Nhat Duc”).	1.52
Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”) aka. Nha Trang Fisheries Joint Stock Company aka. Nhatrang Fisheries Joint Stock Company aka.	

Exporter	Simple average margin (percent)
Nha Trang Fisco aka. Nhatrang Fisco aka. Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”) aka. Nha Trang Fisheries, Joint Stock aka. Nha Trang Fishereies Joint Stock Company (Nha Trang Fisco).	1.52
Phu Cuong Seafood Processing and Import-Export Co., Ltd. aka. Phu Cuong Seafood Processing and Import Export Company Limited aka. Phu Cuong Jostoco Corp.	1.52
Phuong Nam Co., Ltd. (“Phuong Nam”) aka. Western Seafood Processing and Exporting Factory (“Western Seafood”) aka. Phuong Nam Foodstuff Corp. aka. Phuong Nam Co. Ltd.	1.52
Sao Ta Foods Joint Stock Company (“Fimex VN”) aka. Sao Ta Foods Joint Stock Company aka. Fimex VN aka. Sao Ta Seafood Factory aka. Saota Seafood Factory.	1.52
Soc Trang Aquatic Products and General Import Export Company (“Stapimex”) aka. Soc Trang Seafood Joint Stock Company (“Stapimex”) aka. Soc Trang Seafood Joint Stock Company aka. Soc Trang Aquatic Products and General Import Export Company aka. Stapimex aka. Soc Trang Aquatic Products and General Import Export Company-(Stapimex) aka. Stapimex Soc Trans Aquatic Products and General Import Export Company aka. Stapmex.	1.52
Thuan Phuoc Seafoods and Trading Corporation aka. Frozen Seafoods Factory No. 32 aka. Seafoods and Foodstuff Factory aka. My Son Seafoods Factory aka. Seafoods and Foodstuff Factory Vietnam.	1.52
UTXI Aquatic Products Processing Company aka. UT XI Aquatic Products Processing Company aka. UT–XI Aquatic Products Processing Company aka. UTXI aka. UTXI Co. Ltd., aka. Khanh Loi Seafood Factory aka. Hoang Phuong Seafood Factory aka. UTXI Aquatic Products Processing Corporation (“UTXICO”) aka. UTXI Aquatic Products Processing Corporation aka. UTXICO.	1.52
Viet Foods Co., Ltd. aka. Nam Hai Foodstuff and Export Company Ltd.	1.52
Viet Hai Seafood Co., Ltd. aka. Vietnam Fish One Co., Ltd. (“Fish One”) aka. Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”).	1.52
Vietnam-wide Entity.	25.76

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). As noted above, in accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine From the People's Republic of China: Final*

Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c) and (d).

The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

As noted above, consistent with *Ball Bearings,* for the final results, for the companies receiving a separate rate that were not selected for individual review, average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions, excluding any zero and *de minimis* rates, and rates based entirely upon facts available, pursuant to section 735(c)(5)(B) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of 25.76 percent; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I

- Agrex Saigon
- APL Logistics
- Aquatic Products Trading Company
- CP Livestock
- C.P. Vietnam Livestock Co., Ltd.
- C.P. Vietnam Livestock Co. Ltd
- Camau Seafood Fty.
- Ca Mau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 ("CAMIMEX") and/or Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX")
- Ca Mau Seaproducts Exploitation and Service Corporation ("SES")
- Cadovimex Seafood Import-Export and Process Joint Stock Company ("CADOVIMEX")
- Cadovimex Seafood Import-Export and Process Joint Stock Company ("Cadovimex-Vietnam")
- Cadovimex Seafood Import-Export and Process Joint Stock Company ("CADOVIMEX") and/or Cadovimex Seafood Import-Export and Process Joint Stock Company ("Cadovimex-Vietnam)
- Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods")
- Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods") and/or Camranh Seafoods
- Camranh Seafoods Processing Enterprise Pte. (also known as Cam Ranh Seafoods Processing Enteprise Pte., Cam Ranh Seafoods Processing Enterprise Company, Cam Ranh Seafoods, and Camranh Seafoods) and its branch factory, Branch of Camranh Seafoods Processing Enterprise Pte.—Quang Ninh Export Aquatic Products

Processing Factory (also known as Quang Ninh Seaproducts Factory) (collectively, "Camranh Seafoods")
- Can Tho Agricultural and Animal Product Import Export Company ("CATACO")
- Can Tho Agricultural Products
- Can Tho Agricultural and animal Product Import Export Company ("CATACO") and/or Can Tho Agricultural and Animal Products Import Export Company ("CATACO")
- Can Tho Animal Fisheries Product Processing Export Enterprise (Cafatex)
- Can Tho Seafood Exports
- Cautre Export Goods Processing Joint Stock Company
- Coastal Fishery Development
- D & N Foods Processing Danang
- Daewoo Apparel Vietnam
- Danang Seaproducts Import Export Corporation ("Seaprodex Danang) and/or Danang Seaproducts Import Export Corporation (and its affiliates) ("Seaprodex Danang")
- Danang Seaproducts Import Export Corporation (and its affiliate, Tho Quang Seafood Processing and Export Company) (collectively "Seaprodex Danang")
- Foodstuff Factory Vietnam
- Frozen Seafoods Fty
- Frozen Seafoods Factory No. 32 and/or Frozen Seafoods Fty
- Gallant Ocean Vietnam
- Grobest & I–Mei Industry Vietnam
- Hai Thanh Food Company Ltd.
- Hai Viet Corporation ("HAVICO")
- Hai Vuong Co., Ltd.
- Hanoi Seaproducts Import Export Corporation ("Seaprodex Hanoi")
- Hatrang Frozen Seaproduct Fty
- Investment Commerce Fisheries Corporation ("Incomfish") and/or Investment Commerce Fisheries Corporation ("INCOMFISH")
- Kaier Furniture (Vietnam) Co., Ltd.
- Khanh Loi Production and Trading Co.
- Kien Gan Seaproduct Import and Export Company ("KISIMEX")
- Kien Long Seafoods
- Kim Anh Co., Ltd.
- Kim Do Wood Production
- Lode Star Co., Ltd.
- Minh Hai Export Frozen Seafood Processing Joint Stock Company ("Minh Hai Jostoco") and/or Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco")
- Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai") and/or Minh Hai Joint-Stock Seafoods Processing Company ("Sea Minh Hai")
- Minh Hai Sea Products Import Export Company (Seaprimex Co)
- Minh Hai Joint Stock Processing Co.
- Minh Phat Seafood and/or Minh Phat Seafood Co., Ltd.
- Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively "Minh Phu Group")
- Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) and/or Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively "Minh Phu Group")
- Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco") and/or Nha Trang Fisheries Joint Stock Company ("Nha Trang FISCO")
- Nha Trang Seaproduct Company ("Nha Trang Seafoods")
- Nyd Co., Ltd.
- Orange Fashion
- Pataya Food Industry (Vietnam) Ltd.
- Phu Cuong Seafood Processing & Import-Export Co., Ltd. (aka Phu Cuong Jostoco Seafood Corporation, Phu Cuong Jostoco Corp. or Phu Cuong Seafood Processing Import-Export Company Limited)
- Phu Cuong Seafood Processing and Import-Export Co., Ltd. and/or Phu Cuong Seafood Processing & Import-Export Co., Ltd.
- Phu Thuan Corporation
- Phuong Nam Company, Ltd. ("Phuong Nam")
- Phuong Nam Seafood Co., Ltd.
- S.R.V. Freight Services Co., Ltd.
- Sao Ta Foods Joint Stock Company ("Fimex VN")
- Sao Ta Foods Joint Stock Company ("Fimex VN") and/or Sao Ta Foods Joint Stock Company ("FIMEX")
- Seaprodex Minh Hai Factory
- Seaprodex Minh Hai Workshop 1
- Sea Product
- Soc Trang Aquatic Products and General Import Export Company ("Stapimex")
- Soc Trang Aquatic Products and General Import Export Company ("Stapimex") and/or Soc Trang Aquatic Products and General Import-Export Company ("STAPIMEX")
- Song Huong ASC Import-Export Company Ltd.
- Song Huong ASC Joint Stock Company
- Sustainable Seafood
- Tan Thanh Loi Frozen Food Co., Ltd.
- Tecapro Co. (Tacbest Factory)
- Thanh Hung Co., Ltd.
- Thuan Phuoc Seafoods and Trading Corporation and its separate factories Frozen Seafoods Factory No. 32, Seafoods and Foodstuff Factory, and My Son Seafoods Factory (collectively "Thuan Phuoc Corp.")
- Thuan Phuoc Seafoods and Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation (and its affiliates)
- Tien Tien Garment Joint Stock Company
- Tithi Co., Ltd.
- Vien Thang Pte Co., Ltd.
- Viet Hai Seafood Co., Ltd. a/k/a Vietnam Fish One Co., Ltd. ("Fish One")
- Viet Hai Seafood Co., Ltd.
- Viet Hai Seafoods Company Ltd. (Vietnam Fish One)
- Viet Nhan Company
- Vietnam Northern Viking Technology Co., Ltd.
- Vilfood Co
- Vina Atm Co., Ltd.
- Vinatex Danang
- Vinh An Co., Ltd
- Vinh Hoan Co., Ltd

Appendix II

- Bac Lieu Fisheries
- Bac Lieu Fisheries Company
- Bac Lieu Seaproducts Processing Factory
- Cadovimex Seafood
- Cadovimex Seafood Imp-Exp & Proc. Joint-Stock Co.
- Camau Seafood, Factory No. 4
- Cantho Imp Expo Fishery Ltd.
- Danang Sea Products Import Export Corporation
- Frozen Seafoods Factory
- Hoang Phuong Seafood Co.
- Minh Hai Export Frozen Seafood Processing Joint-Stock Company (Minh Hai—Jostoco)
- Minh Hai Joint Stock Processing Co.
- Minh Hai Seaproducts Co Ltd. (Seaprimexco)
- Minh Hai Seaproducts Import Export Company (Seaprimex Co)
- Minh Phat Co Ltd.
- Minh Qui Seafoods Co. Ltd.
- Minh-Hai Export Frozen Seafood Processing Joint-Stock Company
- Nha Trang Fisheries Joint Stock
- Phuong Nam Co.
- Soc Trang Aquatic Products and General Export Import Company
- Soc Trang Aquatic Products and General Import Export Company—(Stapi Mex)
- Soc Trang Aquatic Products and General Import Export Company (Stapimex)
- Soc-Trang Aquatic Products and General Import Export Company (Stapmix)
- Thuan Phuoc
- Thuan Phuoc Seafood and Trading Company
- UTXI Aquatic Products Processing Co

[FR Doc. 2011–4977 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Non-Commercial Permit and Reporting Requirements in the Main Hawaiian Islands Bottomfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before May 3, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for renewal of a currently approved information collection.

All non-commercial participants (including vessel owners, operators, and crew) in the boat-based bottomfish fishery in the main Hawaiian Islands are required to obtain a federal bottomfish permit, pursuant to 50 CFR 665. This collection of information is needed for permit issuance, to identify actual or potential participants in the fishery, determine qualifications for permits, and to help measure the impacts of management controls on the participants in the fishery. The permit program is also an effective tool in the enforcement of fishery regulations and serves as a link between the National Marine Fisheries Service (NMFS) and fishermen.

All vessel owners or operators in this fishery are required to submit a completed logbook form at the completion of each fishing trip. These logbook reporting sheets document the species and amount of species caught during the trip. The reporting requirements are crucial to ensure that NMFS and the Western Pacific Fishery Management Council (Council) will be able to monitor the fishery and have fishery-dependent information to develop an estimate of an Annual Catch Limit (annual Total Allowable Catch) for the fishery, evaluate the effectiveness of management measures, determine whether changes in fishery management programs are necessary, and estimate the impacts and implications of alternative management measures.

II. Method of Collection

Permit information is collected via permit applications. Permits are valid for one calendar year and may be renewed annually. Completed logbook forms are required to be submitted to NMFS by vessel owners or operators within 72 hours of the end of each fishing trip.

III. Data

OMB Control Number: 0648–0577.

Form Number: None.

Type of Review: Regular submission (renewal of a currently approved information collection).

Affected Public: Vessel owners and non-commercial fishermen.

Estimated Number of Respondents: 100.

Estimated Time per Response: 15 minutes per permit application, 30 minutes per logsheet.

Estimated Total Annual Burden Hours: 375.

Estimated Total Annual Cost to Public: $400.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 1, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–4933 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Cordell Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Cordell Bank National Marine Sanctuary Advisory Council: Fishing, Primary and Alternate seats; Research, Primary and Alternate seats; Community-at-Large Mann County, Primary and Alternate seats. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's Charter.

DATES: Applications are due by April 1, 2011.

ADDRESSES: Application kits may be obtained from *http://cordellbank.noaa.gov/* or Kaitlin Graiff, *kaitlin.graiff@noaa.gov,* P.O. Box 159, Olema, CA 94950. Completed applications should be sent to the above postal or e-mail address, or faxed to 415–663–0315, attn. Kaitlin Graiff.

FOR FURTHER INFORMATION CONTACT: Kaitlin Graiff, Advisory Council Coordinator, 415–663–0314 x105, *kaitlin.graiff@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Cordell Bank National Marine Sanctuary Advisory Council was established in 2001 to ensure continued public participation in the management of the sanctuary. Council seats are occupied by members representing research, conservation, maritime activity, fishing, education, Mann and Sonoma County community at large, as well as Federal agency partners. Individual council

members act as liaisons between the Sanctuary and their constituent groups. The council holds a minimum of four regular meetings per year, and an annual retreat in the summer.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 23, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–4709 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seat on the Gray's Reef National Marine Sanctuary Advisory Council: Georgia conservation. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by April 8, 2011.

ADDRESSES: Application kits may be obtained from Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov,* 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381) Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov,* 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381.

SUPPLEMENTARY INFORMATION: The sanctuary advisory council was established in August 1999 to provide advice and recommendations on management and protection of the sanctuary. The advisory council, through its members, also serves as liaison to the community regarding sanctuary issues and represents community interests, concerns, and management needs to the sanctuary and NOAA.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 23, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–4706 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA253

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued three one-year Letters of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from February 27, 2011, through February 26, 2012, and May 15, 2011, through May 14, 2012.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers under LOAs during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*). NMFS received requests for LOA renewals

from Energy Resource Technology GOM, Inc. (ERT), Demex International, Inc. (Demex), and Noble Energy, Inc. (Noble Energy), for activities covered by the EROS regulations.

Reporting

NMFS regulations require timely receipt of reports for activities conducted under the previously issued LOA, and a determination that the required mitigation, monitoring, and reporting were undertaken. NMFS Galveston Laboratory's Platform Removal Observer Program (PROP) has provided reports for ERT and Noble Energy's removal of offshore structures during 2010. Demex has not used their LOA for any operations to date. NMFS PROP observers and non-NMFS observers reported the following during ERT and Noble Energy's EROS operations in 2010:

Company	Structure	Dates	Marine mammals sighted (individuals)	Biological impacts observed to marine mammals
ERT	Vermillion Area, Block 199, Platform JA.	May 13 to 17, 2010	Bottlenose dolphins (22), Spotted dolphins (15).	None.
ERT	South Marsh Island Area, Block 24, Platform A.	May 11 to 16, 2010	None	None.
ERT	West Cameron Area, Block 331, Platform A.	May 14 to 20, 2010	Bottlenose dolphins (8), Unidentified dolphins (13).	None.
ERT	West Cameron Area, Block 458, Platform D.	May 16 to 21 and August 22 to 24, 2010.	Bottlenose dolphins (23).	A bottlenose dolphin was killed at this location via entanglement in a diver's guide line.
ERT	South Marsh Island Area, Block 113, Platform B.	May 17 to 23, 2010	Bottlenose dolphins (14).	None.
ERT	West Cameron Area, Block 328, Platform A.	May 21 to 24, 2010	Bottlenose dolphins (1).	None.
ERT	Eugene Island Area, Block 128A, Platform JC.	May 24 to June 4, 2010.	Bottlenose dolphins (77).	None.
ERT	East Cameron Area, Block 282, Platform C.	May 22 to 23, May 25 to 29, June 12 to 17, and August 25, 2010.	Spotted dolphins (20)	None.
ERT	West Cameron Area, Block 405, Platform A.	May 25 to June 3, 2010.	None	None.
ERT	East Cameron Area, Block 298, Platform E.	May 29 to June 1, and June 18 to 20, 2010.	None	None.
ERT	High Island Area, Block A544, Platform A.	June 15 to 17, and August 26 to 27, 2010.	Bottlenose dolphins (14), Spotted dolphins (8).	None.
ERT	East Cameron Area, Block 364, Platform A.	August 2 to 6, and August 30 to September 2, 2010.	None	None.
ERT	East Cameron Area, Block 346, Subsea Well #6.	August 28 to 29, 2010	None	None.
Noble Energy	Brazos Area, Block A51, Platform F.	June 20 to 24, 2010	Bottlenose dolphins (30), Spotted dolphins (11).	None.
Noble Energy	Eugene Island Area, Block 308, Platform A.	June 21 to 23, July 5 to 6, and July 10 to 11, 2010.	None	None.
Noble Energy	Main Pass Area, Block 305, Platform B.	August 16 to 21, 2010	Unidentified dolphins (1).	None.

On May 20, 2010, NMFS received a phone call from a PROP observer regarding a single bottlenose dolphin that was injured and most likely killed by entanglement in a diver's guide line during platform removal operations. ERT was conducting these EROS operations in the GOM accompanied by a LOA, issued under the MMPA. No serious injury or mortality was anticipated or authorized in the EROS regulations. The PROP observer reported the incident as required in EROS regulations. The mortality of the individual bottlenose dolphin was unrelated to the use of explosives, and determined as unforeseen by NMFS. During the many years in which NMFS PROP observers have monitored EROS operations, this is the first reported observed lethal "take" by entanglement of a dolphin in a diver guide line or any other kind of line.

There are two primary methodologies used in the GOM for severing decommissioned targets; non-explosive and explosive severance. The EROS

regulations analyzed both methodologies and determined that non-explosive severance activities have little or no impact on the marine environment and would not result in an incidental take of marine mammals, though they are relatively time-consuming and potentially harmful to human health and safety (primarily for divers). Due to the unlikelihood of take of marine mammals incidental to entanglement during EROS activities, the then Minerals Management Service (now the Bureau of Ocean Energy Management, Regulation, and Enforcement) did not request (nor did NMFS contemplate) MMPA authorization for take of marine mammals from entanglement in the EROS regulations.

Due to the low predictability of an incident resulting in the mortality of a marine mammal from entanglement in a diver's guide line, NMFS's regulations for EROS do not address this aspect of the activity; nor is NMFS currently aware of any specific additional monitoring and mitigation measures to further reduce the likelihood of such an event, other than the recommendation to remove any unattended lines from the water column and/or keep guide lines taut (i.e., no slack) during EROS operations. NMFS may further explore monitoring and mitigation measures in the next rulemaking for EROS activities. In the meantime, NMFS will continue to monitor EROS activities and may recommend additional monitoring and mitigation measures to future LOA holders.

Of note, ERT was in compliance with the mitigation and monitoring measures required by the regulations and LOA and provided the specific information outlined in the reporting section of the rule, as well as additional information. The unexpected dolphin mortality does not change the negligible impact and small numbers determinations in the regulations.

Authorization

Pursuant to these regulations, NMFS has issued an LOA to Energy Resource Technology GOM, Inc., Demex International, Inc., and Noble Energy, Inc. Issuance of the LOAs is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: February 23, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–4972 Filed 3–3–11; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Public Availability of Commodity Futures Trading Commission FY 2010 Service Contract Inventory

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Public Availability of FY 2010 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Commodity Futures Trading Commission is publishing this notice to advise the public of the availability of the FY 2010 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* Commodity Futures Trading Commission has posted its inventory and a summary of the inventory on the CFTC homepage at the following link: *http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/cftcserviceinventory_2010.pdf.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Sonda R. Owens in the Office of Financial Management, Procurement at 202–418–5182 or *sowens@cftc.gov.*

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–4850 Filed 3–3–11; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Guidance for Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Corporation for National and Community Service.

ACTION: Guidance for Corporation Notices, with request for comments.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), is submitting the below information for future Corporation **Federal Register** Notices in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, OMB is coordinating the development of the following proposed Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This notice announces that the Corporation intends to submit collections to OMB for approval and solicit comments on specific aspects for the proposed information collection.

DATES: Comments must be submitted April 4, 2011.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *smar@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Amy Borgstrom, Associate Director of Policy, Corporation for National and Community Service, at (202) 606–6930 or e-mail to *aborgstrom@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

No comments were received in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide Corporation for National and Community Service projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 20.

Respondents: 93,000.

Annual Responses: 93,000.

Frequency of Response: Once per request.

Average Minutes per Response: 60.

Burden Hours: 93,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: February 28, 2011.

Amy Borgstrom,

Associate Director of Policy.

[FR Doc. 2011–4881 Filed 3–3–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Extension of Web-Based TRICARE Assistance Program Demonstration Program

AGENCY: Department of Defense.

ACTION: Notice of a Two Year Extension of the Web-Based TRICARE Assistance Program.

SUMMARY: This notice is to advise interested parties of an extension to the Military Health System (MHS) demonstration project, under authority of Title 10, U.S. Code, Section 1092, entitled Web-Based TRICARE Assistance Program. This demonstration was effective August 1, 2009, as referenced in the original **Federal Register** Notice, 74 FR 3667, July 24, 2009. The demonstration was extended to March 31, 2011, as referenced by **Federal Register** Notice, March 30, 2010. The demonstration project uses existing managed care support contracts (MCSC) to allow Web-based behavioral health and related services including non-medical counseling and advice services to active duty service members (ADSM), their families and members and their dependents enrolled in TRICARE Reserve Select, and those eligible for the Transition Assistance Management Program (TAMP) who reside in the continental United States. The extension is necessary to allow more time to measure the effectiveness of the demonstration in meeting its goal of improving beneficiary access to behavioral health care by incorporating Web-based technology.

DATES: *Effective Date:* This extension will be effective April 1, 2011. The demonstration project will continue until March 31, 2012.

ADDRESSES: TRICARE Management Activity (TMA), Health Plan Operations, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: For questions pertaining to this demonstration project, Mr. Richard Hart, (703) 681–0047.

SUPPLEMENTARY INFORMATION:

a. Background

On page 431 of the House Appropriations Committee Print accompanying H.R. 2638, the Department of Defense Appropriations Act for FY 2009, Joint Explanatory Statement, it is noted: "An area of particular interest is the provision of appropriate and accessible counseling to service members and their families who live in locations that are not close to military treatment facilities, other MHS facilities, or TRICARE providers. Web-based delivery of counseling has significant potential to offer counseling to personnel who otherwise might not be able to access it. Therefore, the Department is directed to establish and use a Web-based Clinical Mental Health Services Program as a way to deliver critical clinical mental health services to service members and families in rural areas."

The TRICARE Assistance Program (TRIAP) demonstration, as outlined in 74 FR 3667 July 24, 2009 launched August 1, 2009, to provide the capability for short-term, problem solving counseling between eligible beneficiaries and licensed counselors utilizing video technology and software such as Skype or iChat. Regional contractors were tasked with formulating and initiating the programs. TRIAP services are available 24/7 and ADSMs, their spouses of any age, and other family members 18 years of age or older who reside in the United States

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 2,500,000.

are eligible to participate. Enrollees in TRICARE Reserve Select and the Transitional Assistance Management Program may also use the program. TRIAP provides assistance to beneficiaries dealing with personal problems that might adversely impact their work performance, health, and well-being. It includes assessment, short-term counseling, and referrals to more comprehensive levels of care if needed. TRIAP is based on commercial employee assistance models and provides counseling in a virtual face-to-face environment. There is a no diagnosis made, there are no limits to usage, and no notification about those seeking counseling will be made to their primary care managers or others, unless required by the counselor's licensure (*e.g.,* spouse abuse). Participant confidentiality is protected, as no medical record entry is made.

Calls per month to the TRIAP line since the demonstration was extended and an aggressive marketing campaign launched have increased two fold, however, the majority (89%) of the calls are in the TRICARE West Region. In order to re-engage education efforts in the TRICARE North and South regions, allow enough time for these efforts to take effect and provide enough time to gather adequate data on the feasibility of utilizing audio and visual technologies including Web-based services to our active duty service members, their families and other beneficiaries on a permanent basis, an extension of the demonstration is necessary.

b. Implementation

This demonstration extension will be effective April 1, 2011.

c. Evaluation

As noted in the original **Federal Register** Notice, 74 FR 3667 July 24, 2009, and the extension **Federal Register** Notice, March 30, 2010, an independent evaluation of the demonstration will be conducted. It will be performed retrospectively and using administrative measures of behavioral health care access to provide analyses and comment on the effectiveness of the demonstration in meeting its goal of improving beneficiary access to behavioral health care by incorporating Web-based technology.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–4867 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE, Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2011 Mental Health Rate Updates

AGENCY: Department of Defense.

ACTION: Notice of Updated Mental Health Rates for Fiscal Year 2011.

SUMMARY: This notice provides the updated regional per-diem rates for low-volume mental health providers; the update factor for hospital-specific per-diems; the updated cap per-diem for high-volume providers; the beneficiary per-diem cost-share amount for low-volume providers; and, the updated per-diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for Fiscal Year 2011.

DATES: *Effective Date:* The Fiscal Year 2011 rates contained in this notice are effective for services on or after October 1, 2010.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Medical Benefits and Reimbursement Branch, TMA, telephone (303) 676–3803.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** (FR) on September 6, 1988 (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993 (58 FR 35–400) set forth maximum per-diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal Fiscal Year. As stated in the final rules, each per-diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System (*i.e.,* this is the same update factor used for the inpatient prospective payment system). For Fiscal Year 2011, the market basket rate is 2.6 percent. This year, Medicare applied two reductions to their market basket amount: (1) a 0.25 percent reduction due to provisions found in the Patient Protection and Affordable Care Act, and (2) a 2.9 percent reduction for documentation and coding adjustments found in Public Law 110–90. These two reductions do not apply to TRICARE. Hospitals and units with hospital specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for Fiscal Year 2011 updated by 2.6 percent.

Partial hospitalization rates for full-day and half-day programs will also be updated by 2.6 percent for Fiscal Year 2011.

The cap amount for high-volume hospitals and units will also be updated by the 2.6 percent for Fiscal Year 2011.

The beneficiary cost share for low volume hospitals and units will also be updated by the 2.6 percent for Fiscal Year 2011.

Per 32 Code of Federal Regulations (CFR) 199.14, the same area wage indexes used for the CHAMPUS Diagnosis-Related Group (DRG)-based payment system shall be applied to the wage portion of the applicable regional per-diem for each day of the admission. The wage portion shall be the same as that used for the CHAMPUS DRG-based payment system. For wage index values greater than 1.0, the wage portion of the regional rate subject to the area wage adjustment is 68.8 percent for Fiscal Year 2011. For wage index values less than or equal to 1.0, the wage portion of the regional rate subject to the area wage adjustment is 62 percent.

Additionally, 32 CFR 199.14, requires that hospital specific and regional per-diems shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

The following reflect an update of 2.6 percent for Fiscal Year 2011.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME FOR FISCAL YEAR 2011

United States census region	Regional rate
Northeast:	
New England	$764
Mid-Atlantic	736
Midwest:	
East North Central	636
West North Central	600
South:	
South Atlantic	757
East South Central	810
West South Central	690
West:	
Mountain	689
Pacific	814
Puerto Rico	519

Beneficiary cost-share: Beneficiary cost-share (other than dependents of

Active Duty members) for care paid on the basis of a regional per-diem rate is the lower of $202 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2010. Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $960 per day for services on or after October 1, 2010.

The following reflect an update of 2.6 percent for Fiscal Year 2011 for the partial hospitalization rates.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS

[Fiscal year 2011]

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (Maine, N.H., Vt., Mass., R.I., Conn.)	$306	$227
Mid-Atlantic:		
(N.Y., N.J., Penn.)	333	250
Midwest:		
East North Central (Ohio, Ind., Ill., Mich., Wis.)	293	218
West North Central:		
(Minn., Iowa, Mo., N.D., S.D., Neb., Kan.)	293	218
South:		
South Atlantic (Del., Md., D.C., Va., W.Va., N.C., S.C., Ga., Fla.)	314	237
East South Central:		
(Ky., Tenn., Ala., Miss.)	340	256
West South Central:		
(Ark., La., Texas, Okla.)	$340	256
West:		
Mountain (Mon., Idaho, Wyo., Col., N.M., Ariz., Utah, Nev.)	343	259
Pacific (Wash., Ore., Calif., Alaska, Hawaii)	337	252
Puerto Rico	218	165

The above rates are effective for services rendered on or after October 1, 2010.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–4866 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board

AGENCY: Defense Policy Board, Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Policy Board will meet in closed session on March 15, 2011 from 0800 hrs until 1800 hrs and on March 16, 2011 from 0800 hrs until 1030 hrs at the Pentagon.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 703–571–9232.

Dated: February 25, 2011.

Morgan F. Park

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–4864 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of a Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force) will take place.

DATES: Wednesday, March 30, 2011, and Thursday, March 31, 2011 from 8 a.m.–5 p.m.

ADDRESSES: Gaylord National Resort & Convention Center, 201 Waterfront St., National Harbor, MD 20745.

FOR FURTHER CONTACT INFORMATION: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 "Mark as Time Sensitive for March Meeting."
E-mails to *rwtf@wso.whs.mil*. Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is for the Task Force Members to convene and receive briefings on the Marine Corps Wounded Warrior Regiment, the Navy Safe Harbor Program, and the National Guard's Transition Assistance Advisor Program.

Agenda: (Please refer to *http://dtf.defense.gov/rwtf/meetings.html* for the most up-to-date meeting information.)

8 a.m.–5 p.m. Wednesday 30 March 2011

8 Opening and review of recent Task Force Installation Visits
10 Break
10:15 Measures of Effectiveness and Systems of Performance and Accountability and Marine Corps Support to Caregivers in the Marine Corps Wounded Warrior Regiment

11:30 Break Working Lunch
11:45 Marine Corps Measures of Effectiveness and Systems of Accountability: Medical Case Management, Wounded Warrior Regiment
1 Break
1:15 Marine Corps Services for TBI and PTSD
2:15 Break
2:30 Marine Corps Programs for Transition Assistance
3:15 Break
3:30 Marine Corps Support Systems Disability Evaluation System
4:30–5 Close

8 a.m.–5 p.m. Thursday 31 March 2011

8 Welcome and Opening Remarks
9 Public Forum
9:15 Navy Measures of Effectiveness and Systems of Performance and Accountability for the Navy Safe Harbor Program
10:30 Break
10:45 Navy Measures of Effectiveness and Systems of Accountability: Medical Care Case Management, Navy Safe Harbor Program
11:45 Break Working Lunch
12 Navy Medical Services for TBI and PTSD
1 Navy Programs for Transition Assistance
2 Break
2:15 National Guard Transition Assistance Advisor Program
3:15 Break
3:30 National Guard Physiological Health Program
4:30 Close

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Point of Contact: Denise F. Dailey, Designated Federal Officer, (703) 325–6640, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021, *rwtf@wso.whs.mil*.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the above contact information, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed NLT 5 p.m. EST, Monday, March 21, 2011, which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as "Time Sensitive for March Meeting."

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted as above and must identify it is being submitted for an oral presentation by the person making the submission. Identification information must be provided and at a minimum must include a name and a phone number. Determination of who will be making an oral presentation will depend on the submitted topic's relevance to the Task Force's Charter. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/rwtf/* to view the Charter. Individuals making presentations will be notified by Friday, March 25, 2011. Oral presentations will be permitted only on Thursday, March 31, 2011 from 9 a.m. to 9:15 a.m. before the full Task Force. Number of oral presentations will not exceed five, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Joseph Jordon, (703) 325–6640, by 5 p.m. EST, Monday, March 21, 2011.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–4928 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0026]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing 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 without further notice on April 4, 2011 unless comments are received which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045, or Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The 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 new or altered systems reports.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S900.50

SYSTEM NAME:

Labor Hours, Project and Workload Records (December 30, 2008; 73 FR 79850).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 5 U.S.C. Chapter 61, Hours of Work; Chapter 53, Pay Rates and Systems; Chapter 57, Travel, Transportation, and Subsistence; and Chapter 63, Leave; 41 U.S.C. 405a, Uniform Federal Procurement Regulations and Procedures; and FAR Part 16.601(b)(1), Time-and-Materials, Labor-Hour, and Letter Contracts."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed when 6 years, 3 months old or when no longer needed."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Project Manager, DLA Information Operations Ogden, New Cumberland Deputy Director's Office, Defense Logistics Agency, 2001 Mission Drive, Suite 2, New Cumberland, PA 17070–5004. For a list of system managers at the Defense Logistics Agency Primary Level Field Activities write to the Project Manager."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA Freedom of Information Act (FOIA)/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S900.50

SYSTEM NAME:

Labor Hours, Project and Workload Records.

SYSTEM LOCATION:

Defense Logistics Agency Headquarters, 8725 John J. Kingman Road, Suite 6226, Fort Belvoir, VA 22060–6221, and each Defense Logistics Agency (DLA) Primary Level Field Activity. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency military personnel and contractors are covered by this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained include individual's name, User ID, position, supervisor/contracting officer's technical representative, timekeeper, project manager, system access level, organization and office location, contract company, e-mail address and office telephone numbers; rate, work schedule, project and workload records, time and attendance, regular and overtime work hours and leave hours.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 5 U.S.C. Chapter 61, Hours of Work; Chapter 53, Pay Rates and Systems; Chapter 57, Travel, Transportation, and Subsistence; and Chapter 63, Leave; 41 U.S.C. 405a, Uniform Federal Procurement Regulations and Procedures; and FAR Part 16.601(b)(1), Time-and-Materials, Labor-Hour, and Letter Contracts.

PURPOSE(S):

For the purpose of tracking workload/project activity for analysis and reporting purposes, time and attendance, and labor distribution data against projects for management and planning purposes; to maintain management records associated with the operations of the contract; to evaluate and monitor the contractor performance and other matters concerning the contract.

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:

To the contractor's employer for the purpose of resolving any discrepancy in hours billed to Defense Logistics Agency in accordance with FAR Clause 16.601 (b)(1). Records released include individual's name, User ID, position, company, project and workload records, time and attendance, regular and overtime work hours and leave hours.

The DoD "Blanket Routine Uses" as set forth at the beginning of DLA'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:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by subject individual's name or User ID.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to computerized data is controlled by Common Access Cards (CAC) and computer screens automatically lock after a preset period of inactivity with re-entry controlled by Common Access Cards (CAC). Access to records is limited to person(s) responsible for servicing the records in the performance of their official duties and who are properly screened and cleared for need-to-know. Individuals accessing the system of records are to

have taken Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Records are destroyed when 6 years, 3 months old or when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Project Manager, DLA Information Operations Ogden, New Cumberland Deputy Director's Office, Defense Logistics Agency, 2001 Mission Drive, Suite 2, New Cumberland, PA 17070–5004. For a list of system managers at the Defense Logistics Agency Primary Level Field Activities, write to the Project Manager.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA Freedom of Information Act (FOIA)/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, User ID, return mailing address, and organizational location of employee.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Records sources are the subject individual, supervisors, timekeepers, project manager, contractor officers, contractor representatives, and managers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–4931 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0027]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes 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: This proposed action will be effective without further notice on April 4, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045, or the Privacy Act Officer, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Stop 16443, Fort Belvoir, VA 22060–6221.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system reports, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, were submitted on February 25, 2011, 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 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.10

SYSTEM NAME:

Individual Military Personnel Records (November 16, 2004, 69 FR 67112).

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S310.07."

SYSTEM NAME:

Delete entry and replace with "Military Personnel System."

SYSTEM LOCATION:

Delete entry and replace with "Director, Defense Logistics Agency (DLA) Human Resources Center-Military, Military Personnel and Administration (DHRC–M), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and in the Personnel Offices of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses may be obtained from the system manager identified in this notice."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records contain name, grade, Social Security Number (SSN), e-mail, home address, personnel requisitions, assignments and transfers, personnel qualification record extracts, decorations and awards, special orders, evaluation reports, non-judicial punishment documents, position descriptions, promotions documents, retention on Active Duty documents, retirement, resignation, separation documents, clearance certificates, leave/pass of absence documentation, and military training documents."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 5 U.S.C. 301, Departmental Regulations; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "The records are maintained as a local repository of documents generated during the service member's assignment at DLA. The files are used to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise PLFA Commanders and the Director of incidents. The data is also used for reports on force effectiveness, contingency planning, training requirements, and manpower deficiencies. Rating official data is included in the database for management oversight purposes; however, the files are not retrieved or retrievable by rater name, SSN, or other rater attributes.

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Records are retrieved by the individual's name, SSN, or a combination of both."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in a secure, limited access, and monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords and/or Common Access Cards (CAC). All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information and received Information Assurance and Privacy Act training."

RETENTION AND DISPOSAL:

Delete entry and replace with "Upon reassignment from DLA, records are destroyed after 1 year."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, DLA Human Resources Center-Military, Military Personnel and Administration (DHRC–M), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Heads of the DLA Primary Level Field Activities."

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 DLA Privacy Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

"Inquiries should contain the individual's full name, SSN, mailing address and telephone number."

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 DLA Privacy Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

"Inquiries should contain the individual's full name, SSN, mailing address and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA Privacy Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is provided by the individual, taken from military personnel records, and position distribution reports."

* * * * *

S310.07

SYSTEM NAME:

Military Personnel System.

SYSTEM LOCATION:

Director, Defense Logistics Agency (DLA) Human Resources Center-Military, Military Personnel and Administration (DHRC–M), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and in the Personnel Offices of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses may be obtained from the system manager identified in this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty military personnel assigned to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, grade, Social Security Number (SSN), e-mail, home address, personnel requisitions, assignments and transfers, personnel qualification record extracts, decorations and awards, special orders, evaluation reports, non-judicial punishment documents, position descriptions, promotions documents, retention on Active Duty documents, retirement, resignation, separation documents, clearance certificates, leave/pass of absence documentation, and military training documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 301, Departmental Regulations; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The records are maintained as a local repository of documents generated during the service member's assignment at DLA. The files are used to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise PLFA Commanders and the Director of incidents. The data is also used for reports on force effectiveness, contingency planning, training requirements, and manpower deficiencies. Rating official data is included in the database for management oversight purposes; however, the files are not retrieved or retrievable by rater name, SSN, or other rater attributes.

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" apply to this system of records.

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by the individual's name, SSN, or a combination of both.

SAFEGUARDS:

Records are maintained in a secure, limited access, and monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords and/or Common Access Cards (CAC). All personnel whose

official duties require access to the information are trained in the proper safeguarding and use of the information and received Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Upon reassignment from DLA, records are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DLA Human Resources Center-Military, Military Personnel and Administration (DHRC–M), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Heads of the DLA Primary Level Field Activities.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiries should contain the individual's full name, SSN, mailing address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiries should contain the individual's full name, SSN, mailing address and telephone number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA Privacy Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, taken from military personnel records, and position distribution reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–4929 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Access to Care Demonstration Project

AGENCY: Department of Defense.

ACTION: Notice of demonstration project.

SUMMARY: This notice is to advise interested parties of a Military Health System (MHS) Demonstration project under the authority of Title 10, U.S. Code, Section 1092, entitled Department of Defense TRICARE Access to Care Demonstration Project. The demonstration project is intended to improve access to urgent care including minor illness or injury for Coast Guard beneficiaries enrolled in TRICARE Prime or TRICARE Prime Remote while decreasing emergency room visits and healthcare costs. Under the demonstration, Coast Guard active duty service members (ADSMs) and their family members who are enrolled in TRICARE Prime or TRICARE Prime Remote in the South Region would be allowed to self-refer, without an authorization, to a TRICARE network provider such as an Urgent Care Clinic (UCC) or Convenience Center for up to four urgent care visits per year. No referral from their Primary Care Manager (PCM) or authorization by a Health Care Finder will be required and no Point of Service (POS) deductibles and cost shares shall apply to these four unmanaged visits. Additionally, when outside of the South region, these Coast Guard TRICARE Prime or Prime Remote enrollees may use any TRICARE authorized provider or UCC without incurring POS deductibles and cost shares. The ADSM and family member will be required to notify their PCM of any urgent/acute care visits to other than their PCM within 24 hours of the visit and schedule any follow-up treatment that might be indicated with their PCM. If more than the four (4) authorized urgent care visits are used, or if the beneficiary seeks care from a non TRICARE network or non TRICARE authorized provider, POS deductibles and cost shares as required by Title 32, Code of Federal Regulations (CFR), 199.17(n)(3) may apply. Referral requirements for specialty care and inpatient authorizations will remain as currently required by MHS policy.

DATES: This demonstration will be effective 60 days from the date of this notice for a period of twenty-four (24) months.

ADDRESSES: TRICARE Management Activity (TMA), Health Plan Operations, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: For questions pertaining to this demonstration project, please contact Ms. Shane Pham at (703) 681–0039.

SUPPLEMENTARY INFORMATION:

a. Background

Access for acute episodic primary care continues to be in high demand by TRICARE Prime beneficiaries. The current regulations require that if a Prime beneficiary seeks care from a provider other than their PCM, they must first obtain a referral. Otherwise, the care will be covered under the point-of-service option at greater out-of-pocket cost to the Prime beneficiary. This includes urgent care which TRICARE defines as medically necessary treatment for an illness or injury that would not result in further disability or death if not treated immediately but that requires professional attention within 24 hours. On the other hand, emergency care defined as a medical, maternity or psychiatric condition that would lead a "prudent layperson" (someone with average knowledge of health and medicine) to believe that a serious medical condition existed, or the absence of medical attention would result in a threat to his or her life, limb or sight and requires immediate medical treatment or which has painful symptoms requiring immediate attention to relieve suffering, does not require an authorization. Often when a Prime beneficiary needs urgent care after hours or when the PCM does not have available appointments, the Prime beneficiary will seek care from civilian sources such as emergency rooms (ER). While many Prime beneficiaries pay no out-of pocket costs for ER services, the average cost for an ER visit is much higher than an urgent care visit. In many cases, using the ER is not necessary, and a patient's condition can be treated through urgent care. However, TRICARE has found it difficult to enforce the required point-of-service charges when an ER visit was for urgent care and not a true medical emergency.

There are 25,781 Coast Guard active duty service members and their family members enrolled in TRICARE Prime in the South Region. In the South Region, beneficiary ER visits are currently averaging 197 ER visits/1,000 beneficiaries per year and that number is slowly increasing. Analysis indicates much of the care rendered in these ER visits is for acute or chronic conditions that are not true life threatening emergencies and may have been better

suited for care by the PCM or in an urgent care setting.

b. Implementation

This demonstration will be effective 60 days from the date of this notice for a period of twenty-four (24) months.

c. Evaluation

The results of this Demonstration will allow a focused study of the impact of this process on: (1) The reduction of ER utilization and resulting costs, (2) assessment of the availability and accessibility of less expensive acute care services such as UCCs, (3) reduction of administrative processes, and (4) impact on Coast Guard active duty service members and their families. The evaluation/analysis of the demonstration would use Fiscal Year 2008 as the base line with follow-up data analysis conducted at each 6-month interval throughout the 24 month period to monitor of ER and TRICARE authorized UCC utilization workload and cost (claims data). Success of the demonstration would be determined by consistent shifts in health care utilization from ERs to a TRICARE authorized UCCs by 15–20%. A less than 5% shift in utilization from the ER to a TRICARE authorized UCCs would be considered insignificant.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–4863 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Two-Year Continuation of Disease Management Demonstration Project for TRICARE Standard Beneficiaries

AGENCY: Department of Defense.

ACTION: Notice of Two-Year Continuation of Disease Management Demonstration Project for TRICARE Standard Beneficiaries.

SUMMARY: This notice is to advise interested parties of the continuation of a Military Health System (MHS) demonstration project entitled "Disease Management Demonstration Project for TRICARE Standard Beneficiaries". The original demonstration notice was published on June 13, 2007 (72 FR 32628–32629) and described a demonstration project to provide disease management (DM) services to TRICARE Standard beneficiaries in addition to the TRICARE Prime beneficiaries who were already entitled to such services. TRICARE began the demonstration project in March 2007 for Standard beneficiaries and this demonstration project has enabled the MHS to provide uniform policies and practices on disease and chronic care management throughout the TRICARE network. Additionally, the demonstration has helped determine the effectiveness of DM programs in improving the health status of beneficiaries with targeted chronic diseases or conditions, and any associated cost savings. The TRICARE Management Activity (TMA) chose a phased approach to determine the efficacy and cost effectiveness of its disease management demonstration, beginning with beneficiaries identified with the disease states of asthma, heart failure, and diabetes. TMA now intends to continue the disease management services to TRICARE Standard beneficiaries until a permanent TRICARE disease management benefit (per the John Warner National Defense Authorization Act of 2007, section 734) is implemented. This continuation of the disease management demonstration project will be conducted under the authority provided in 10 U.S.C. 1092.

DATES: *Effective date:* The extension of the demonstration will be effective April 1, 2011 and will continue for a period of two years until March 31, 2013.

ADDRESSES: TRICARE Management Activity (TMA), 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Robin Marzullo, Disease Management Nurse Consultant, Population Health and Medical Management—TRICARE Management Activity, telephone (703) 681–6717 x 1214.

SUPPLEMENTARY INFORMATION:

A. Background

For additional information on the TRICARE demonstration project for disease management, please see 72 FR 32628–32629 and 74 FR 11089–11090. The original demonstration notice focused on explaining the differences between the disease management benefits available to TRICARE Standard and TRICARE Prime beneficiaries and the manner in which disease management services had been provided prior to the demonstration. The prior notice explained that for purposes of the demonstration, the Department of Defense (DoD) would waive, for these disease management services provided to Standard beneficiaries, the provisions of 10 U.S.C. 1079(a)(13) and 32 CFR 199.4(g)(39) that expressly exclude clinical preventive services for TRICARE Standard beneficiaries. The prior notice also explained the enrollment process and cap on disease management costs.

B. Description of Extension of Demonstration Project

Under this demonstration, DoD has waived, for disease management services provided to TRICARE Standard beneficiaries, the provisions of 10 U.S.C. 1079(a)(13) and 32 CFR 199.4(g)(39) that expressly exclude clinical preventive services for TRICARE Standard beneficiaries in the current benefit. The Military Health System (MHS) has enrolled TRICARE Standard beneficiaries in its disease management programs. Disease management services provided to Standard beneficiaries have included, but have not been limited to: Clinical preventive examinations, patient education and counseling services, and periodic screening exams. MHS disease management program costs have been capped not to exceed the amount approved by the contracting officer. The disease management program costs are total costs of disease management services provided to both Prime and Standard beneficiaries. Only those beneficiaries identified by the TRICARE Management Activity (TMA) for disease management of asthma, heart failure, diabetes, COPD, depression, anxiety, and cancer, have been included in the current program. Beneficiaries identified by TMA are included in the disease management program unless they choose to opt out. This action directly reduces variation across the system and results in improved consistency and quality for beneficiaries with targeted chronic illness, regardless of TRICARE classification. Furthermore, including TRICARE Standard beneficiaries in current disease management efforts informs the MHS about total potential savings and return on investment (ROI) associated with disease management, a stated requirement of the John Warner National Defense Authorization Act for Fiscal Year 2007. Continuing to provide disease management services to all TRICARE beneficiaries will continue to maintain our overall quality of care throughout the MHS program. By educating patients about their disease and helping them manage their symptoms, many of the complications of these diseases can be avoided, possibly slowing the progression of their chronic disease, thus resulting in significant cost savings.

C. Implementation

The extension of the demonstration will be effective on April 1, 2011. The terms and conditions of the original demonstration as provided in the Notice published at 72 FR 32368–32369 will continue on that date.

D. Evaluation

An independent evaluation of the demonstration will continue to be conducted. The evaluation is designed to use a combination of administrative and survey measures of health care outcomes (clinical, utilization, financial, and humanistic measures) to provide analyses and comment on meeting its goal of providing uniform disease management policies and practices across the MHS.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–4865 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0028]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

AGENCY: Department of Defense.

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 9(e) and 41(b) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

DATES: Comments on the proposed change must be received within 30 days of the date of this notice.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.*

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, 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 personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Liaison Officer, Department of Defense.

Rule 9(e)

Rule 9(e) currently reads:

(e) Hours. The Clerk's office shall be open for the filing of pleadings and other papers from 8 a.m. to 5 p.m. every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. *See* Rule 36(a). The Court is always open for filing of pleadings and other papers. A pleading or other paper may be filed outside of normal operating hours of the Clerk's office by delivery to the U.S. Marshal on duty in the front lobby of the courthouse. Pleadings will be deemed filed on the date and time delivered to the U.S. Marshal. The U.S. Marshal will notify the Clerk of the filing in accordance with procedures provided by the Clerk.

The proposed change to Rule 9(e) would read:

(e) Hours. The Clerk's office shall be open for the filing of pleadings and other papers from 8 a.m. to 5 p.m. every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. *See* Rule 36(a). The Court is always open for filing of pleadings and other papers. A pleading or other paper may be filed outside of normal operating hours of the Clerk's office by delivery to Court security personnel on duty in the front lobby of the courthouse. Pleadings will be deemed filed on the date and time delivered to Court security personnel. Court security personnel will notify the Clerk of the filing in accordance with procedures provided by the Clerk.

Comment: The proposed change modifies the term "U.S. Marshal" in three places to "Court security personnel." The reason for the change is that security for the Court is now provided by the Pentagon Force Protection Agency, and not the U.S. Marshals Service. The change will therefore more accurately describe the officers on duty.

Rule 41(b)

Rule 41(b) currently reads:

(a) The photographing, televising, recording, or broadcasting of any session of the Court or other activity relating thereto is prohibited unless authorized by the Court.

(b) Any violation of this rule will be deemed a contempt of this Court and, after due notice and hearing, may be punished accordingly. *See* 18 U.S.C. 401.

The proposed change to Rule 41(b) would read:

(a) The photographing, televising, recording, or broadcasting of any session of the Court or other activity relating thereto is prohibited unless authorized by the Court.

(b) Any violation of this rule will be deemed a contempt of this Court and, after due notice and hearing, may be punished accordingly. *See* Article 48, UCMJ.

Comment: In the recent National Defense Authorization Act, Congress amended Article 48, Uniform Code of Military Justice, to give express contempt power to the United States Court of Appeals for the Armed Forces. The proposed change reflects this direct grant of authority to the Court.

[FR Doc. 2011–4927 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2011–0007]

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: This proposed action will be effective without further notice on April 4, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/RIN 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, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory

Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, 703–696–6488, or Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, *Attn:* SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800.

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 **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, were submitted on February 25, 2011, 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 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F001 MRB A DoD

SYSTEM NAME:

Physical Disability Board of Review (PDBR) Records

SYSTEM LOCATION:

Physical Disability Board of Review, Air Force Review Boards Agency, Assistant Secretary of the Air Force, Manpower and Reserve Affairs, 1421 Jefferson Davis Highway, Suite 820, Arlington, VA 22202–3290.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force, Army, Navy, Marine Corps, and Coast Guard veterans who have made application to appeal their Department of Defense physical disability rating(s).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual names, Social Security Number (SSN), address, prior military department affiliation, phone number, military service treatment records, Department of Veteran Affairs medical records, civilian medical records, legal counsel representation, and individual correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5014, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 5043, Commandant of the Marine Corps; U.S.C. 93, Commandant of the Coast Guard; DoDI 6040.44, Lead DoD Component for the Physical Disability Board of Review; and E.O. 9397 (SSN), as amended.

PURPOSE:

Information is used to justify a fair and accurate reassessment of a veteran's Department of Defense Physical Evaluation Board determination. Records provide all the necessary medical information to properly re-evaluate the military department's board determination and rating schedule.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE 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' published at the beginning of the Air Force's compilation of record system notices apply to this system.

To the United States Coast Guard to assist them in the review of recommendations on physical disability ratings. By having this access, they can review and validate the findings.

To the Department of Veterans Affairs (DVA) for the purpose of reviewing and determining physical disability ratings.

To individual legal counsel or representatives to assist them in the defense of their client.

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.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by properly screened and cleared personnel with a need-to-know. Physical records are stored in a secured room. Electronic media is protected by appropriate hardware and software applications. Access authentication is validated through use of Computer Access Cards via user name and password protocols.

RETENTION AND DISPOSAL:

Paper records: Destroy after electronic recordkeeping copy has been created and filed or when no longer needed for revision, dissemination, or reference, whichever is later, by pulping, shredding or burning.

Electronic systems that replace temporary hardcopy records: Destroy on expiration of the retention period previously approved for the corresponding hardcopy records.

Electronic systems that supplement temporary hardcopy records where the hardcopy records are retained to meet recordkeeping requirements: Destroy when the agency determines that electronic records are superseded, obsolete, or no longer needed for administrative, legal, audit, or other operational purposes.

Electronic records are destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER AND ADDRESS:

Physical Disability Board of Review, Air Force Review Boards Agency, Assistant Secretary of the Air Force, Manpower and Reserve Affairs, 1421 Jefferson Davis Highway, Suite 820, Arlington, VA 22202–3290.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Physical Disability Board of Review, Air Force Review Boards Agency, 1421 Jefferson Davis Highway, Suite 820, Arlington, VA 22202–3290.

The requester must include the full name, military status, SSN, date of birth, and copy of proof of identify, such as a driver's license.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves in this

system of records should address written inquiries to the Physical Disability Board of Review, Air Force Review Boards Agency, 1421 Jefferson Davis Highway, Suite 820, Arlington, VA 22202–3290.

The requester must include the full name, military status, SSN, date of birth and copy of proof of identify, such as a driver's license.

In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C 1746:

If executed outside the United States:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

CONTESTING RECORD PROCEDURES:

Air Force's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Air Force Instruction 33–332; 32 CFR part 806; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the applicant, medical providers, military departments Physical Evaluation Boards, and Department of Veteran Affairs service treatment record providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–4926 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2011–0008]

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 changes will be effective on April 4, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Shedrick at (703) 696–6488, or Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington DC 20330–1800.

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 **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on February 25, 2011, 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 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F011 AF XO A

SYSTEM NAME:

Aviation Resource Management System (ARMS) (December 26, 2002, 67 FR 78777).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters United States Air Force (HQ USAF) and USAF Major Command Headquarters. Host, tenant and squadron Aviation Resource Management offices at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Air Force active duty military personnel, Air Force civilian employees, or contractors, Air Force Reserve and Air National Guard personnel, Army, Navy, Marine Corps and foreign military personnel who are assigned to aviation or parachutist duties by competent authority and attached to the U.S. Air Force (USAF) for flying or parachutist support or who have been suspended from flying or jump duties for a period of not more than 5 years."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "The Aviation Resource Management System (ARMS) data base contains a master file of flying and jump records for each individual, a month-to-date transaction file, a twelve month history file, and a career flying and jump history. A centralized file of output reports that provide personnel information on an aircrew member's aviation history, flight time and identification data, is derived from each individual's master record and is also maintained at Headquarters United States Air Force.

An Individual Flight Record Folder (FRF) or Jump Record Folder (JRF) is established for each category of flier and jumper listed above and is the prime repository for a computer listing which itemizes each individual's flight and jump accomplishments as well as various source documents which serve to validate information entered into the computer data base for the system. Each Host Aviation Resource Management (HARM) office maintains a file of

Aeronautical Orders and Military Pay Orders to provide source documentation of flying pay actions initiated by the flight manager. Information that is maintained in the automated files is derived directly from the ARMS master file or from subsequent processing of information entered into the master file.

IDENTIFICATION DATA CONSISTS OF:

Name, Social Security Number (SSN), date of birth, rank, date of rank, date of separation, officer service date, aviation service date, date of enlistment, and unit of assignment for each individual in the Aviation Resource Management System.

DUTY ASSIGNMENT DATA:

Individual's major command of assignment, Air Force specialty code indicating professional duties, unit, responsible operations system manager, base of assignment, branch of service and office symbol.

AIRCREW TRAINING AND QUALIFICATION DATA:

Flight and ground professional flying training accomplishments, aircrew qualification status, physical status for flight duties, types of aircraft assigned.

FLYING PAY ENTITLEMENT DATA:

Monthly flight time, aviation service code, operational flying duty accumulation (OFDA) months and years of rated service collectively to determine flight pay entitlement and to administer the payment of flying incentive pay for authorized individuals."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "37 U.S.C. 301a, Incentive Pay: aviation career; Public Law 92–204, Appropriations Act for 1973; Section 715 Public Law 93–570, Appropriations Act for 1974; Public Law 93–294, Aviation Career Incentive Act of 1974; DoD Instruction 7730.57, Aviation Incentive Pays and Continuation Bonus Program; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "The ARMS provides information and automated data processing capabilities used to handle 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. This information is processed for use by flying or parachutist resource managers at all levels through periodic computer product reports or automated systems interfaces.

The specific uses of information and user categories for this system are:

BASE LEVEL ACTIVITIES:

(1) To establish each member's flying or jump pay entitlement status and to monitor continuing entitlement in accordance with existing directives;

(2) To record each individual's flying or jump activities to include hours, jumps, and specific events, and to provide indications of successful achievement of standards or deficiencies;

(3) To establish each individual's Aviation Service code to indicate type of flying or jump activity or reason for inactive status if applicable;

(4) To determine each rated member's eligibility to perform operational flying or jumping in accordance with existing USAF directives;

(5) To provide an indication of each rated member's total operational flying time in terms of total aviation or parachutist career duties;

(6) To establish suspense lists for use in scheduling flying personnel for flights, schools, tests and similar events directly related to their duties as professional Airmen;

(7) To provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications, and training deficiencies;

(8) To provide information requested by the Air Force Staff, major command, or other base functions, related to the flying duties and accomplishments of all personnel in the file;

(9) To provide statistical data for management analysis and review of all aspects of each base's flying program.

OTHER BASE USERS:

Military personnel flight uses information provided by this system, through an automated data interface, to report the flying status of all individuals and to provide flying career background information used for assignment actions.

Accounting and Finance Office uses Military Pay Orders, prepared by flight aviation management offices, to start and stop flying and jump incentive pay in accordance with each individual's flying status and eligibility as reflected by the information in the system and uses the files to perform payment audits to identify individuals being paid improperly.

Base supply uses flying status information to determine which individuals are qualified to receive authorized flying and jump equipment.

Base Medical Facility uses system data to determine projected workloads associated with scheduled flight physical examinations.

Major Commands use all system data to measure the effectiveness of subordinate unit training programs and to review command-wide flying effectiveness.

Air Force Personnel Center uses ARMS information to satisfy assignment objectives and career development programs for USAF military personnel in the system.

HQ USAF uses identification and flying data to: establish statistical data needed to verify the effectiveness of standard procedures, determine the need for policy modification, provide a timely and accurate census of various types of flyers and jumpers, and provide a centralized point for collection and collation of data used by all levels of management."

* * * * *

STORAGE:

Delete entry and replace with "File folders and electronic storage media."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by custodians of the record system, by person(s) 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. Access is specifically controlled by the HARM office. Records are stored in locked cabinets or rooms. Records stored in computer storage devices are protected by computer system software. Computer terminals are locked when not in use or kept under surveillance."

RETENTION AND DISPOSAL:

Delete entry and replace with "Electronic records are maintained on magnetic disks and destroyed 8 years after system discontinuance. If a disk is damaged or replaced, the drive is rendered unusable by being degaussed. Physical records are released to members upon retirement or separation. Members hand-carry their physical record, during permanent change of stations, to the gaining HARM while an electronic copy is retained by the losing HARM and set to automatically delete after 30 days. Physical records are turned over to convening authorities following aircraft accidents and are either returned to the HARM or retained in accordance with rules of evidence."

* * * * *

F011 AF XO A

SYSTEM NAME:

Aviation Resource Management System (ARMS).

SYSTEM LOCATION:

Headquarters United States Air Force (HQ USAF) and Major Command Headquarters. Host, tenant and squadron Aviation Resource Management offices at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, Air Force civilian employees, or contractors, Air Force Reserve and Air National Guard personnel, Army, Navy, Marine Corps and foreign military personnel who are assigned to aviation or parachutist duties by competent authority and attached to the U.S. Air Force (USAF) for flying or parachutist support or who have been suspended from flying or jump duties for a period of not more than 5 years.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Aviation Resource Management System (ARMS) data base contains a master file of flying and jump records for each individual, a month-to-date transaction file, a twelve month history file, and a career flying and jump history. A centralized file of output reports that provide personnel information on an aircrew member's aviation history, flight time and identification data, is derived from each individual's master record and is also maintained at Headquarters United States Air Force.

An Individual Flight Record Folder (FRF) or Jump Record Folder (JRF) is established for each category of flier and jumper listed above and is the prime repository for a computer listing which itemizes each individual's flight and jump accomplishments as well as various source documents which serve to validate information entered into the computer data base for the system. Each Host Aviation Resource Management (HARM) office maintains a file of Aeronautical Orders and Military Pay Orders to provide source documentation of flying pay actions initiated by the flight manager. Information that is maintained in the automated files is derived directly from the ARMS master file or from subsequent processing of information entered into the master file.

IDENTIFICATION DATA CONSISTS OF:

Name, Social Security Number (SSN), date of birth, rank, date of rank, date of separation, Officer Service date, aviation service date, date of enlistment, and unit of assignment for each individual in the Aviation Resource Management System.

DUTY ASSIGNMENT DATA:

Individual's major command of assignment, Air Force specialty code indicating professional duties, unit, responsible operations system manager, base of assignment, branch of service and office symbol.

AIRCREW TRAINING AND QUALIFICATION DATA:

Flight and ground professional flying training accomplishments, aircrew qualification status, physical status for flight duties, types of aircraft assigned.

FLYING PAY ENTITLEMENT DATA:

Monthly flight time, aviation service code, operational flying duty accumulation (OFDA) months and years of rated service collectively to determine flight pay entitlement and to administer the payment of flying incentive pay for authorized individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

37 U.S.C. 301a, Incentive Pay: aviation career; Public Law 92–204, Appropriations Act for 1973; Section 715 Public Law 93–570, Appropriations Act for 1974; Public Law 93–294, Aviation Career Incentive Act of 1974; DoD Instruction 7730.57, Aviation Incentive Pays and Continuation Bonus Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The ARMS provides information and automated data processing capabilities used to handle 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. This information is processed for use by flying or parachutist resource managers at all levels through periodic computer product reports or automated systems interfaces.

The specific uses of information and user categories for this system are:

Base Level Activities: (1) To establish each member's flying or jump pay entitlement status and to monitor continuing entitlement in accordance with existing directives;

(2) To record each individual's flying or jump activities to include hours, jumps, and specific events, and to provide indications of successful achievement of standards or deficiencies;

(3) To establish each individual's Aviation Service code to indicate type of flying or jump activity or reason for inactive status if applicable;

(4) To determine each rated member's eligibility to perform operational flying or jumping in accordance with existing USAF directives;

(5) To provide an indication of each rated member's total operational flying time in terms of total aviation or parachutist career duties;

(6) To establish suspense lists for use in scheduling flying personnel for flights, schools, tests and similar events directly related to their duties as professional Airmen;

(7) To provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications, and training deficiencies;

(8) To provide information requested by the Air Force Staff, major command, or other base functions, related to the flying duties and accomplishments of all personnel in the file;

(9) To provide statistical data for management analysis and review of all aspects of each base's flying program.

Other Base Users: Military personnel flight uses information provided by this system, through an automated data interface, to report the flying status of all individuals and to provide flying career background information used for assignment actions.

Accounting and Finance Office uses Military Pay Orders, prepared by flight aviation management offices, to start and stop flying and jump incentive pay in accordance with each individual's flying status and eligibility as reflected by the information in the system and uses the files to perform payment audits to identify individuals being paid improperly.

Base supply uses flying status information to determine which individuals are qualified to receive authorized flying and jump equipment.

Base Medical Facility uses system data to determine projected workloads associated with scheduled flight physical examinations.

Major Commands use all system data to measure the effectiveness of subordinate unit training programs and to review command-wide flying effectiveness.

Air Force Personnel Center uses ARMS information to satisfy assignment objectives and career development

programs for USAF military personnel in the system.

HQ USAF uses identification and flying data to establish statistical data needed to verify the effectiveness of standard procedures, determine the need for policy modification, provide a timely and accurate census of various types of flyers and jumpers, and provide a centralized point for collection and collation of data used by all levels of management.

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' published at the beginning of the Air Force's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and electronic storage media.

RETRIEVABILITY:

Retrieved by name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodians of the record system, by person(s) 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. Access is specifically controlled by the HARM office. Records are stored in locked cabinets or rooms. Records stored in computer storage devices are protected by computer system software. Computer terminals are locked when not in use or kept under surveillance.

RETENTION AND DISPOSAL:

Electronic records are maintained on magnetic disks and destroyed 8 years after system discontinuance. If a disk is damaged or replaced, the drive is rendered unusable by being degaussed. Physical records are released to members upon retirement or separation. Members hand-carry their physical record, during permanent change of stations, to the gaining HARM while an electronic copy is retained by the losing HARM and set to automatically delete after 30 days. Physical records are turned over to convening authorities following aircraft accidents and are either returned to the HARM or retained in accordance with rules of evidence.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquires to or visit the Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480 or visit their local HARM office. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests should contain individual's name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480 or visit their local HARM office. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests should contain individual's name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and 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, aircrew or parachutist managers, automated system interfaces and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–4930 Filed 3–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the following meeting notice is announced:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: March 24, 2011.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, Pennsylvania 17013.

Time of Meeting: 8:30 a.m.–12:30 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant and staff and faculty; table and examine online College issues; assess resident and distance education programs, self-study techniques, assemble a working group for the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose strategies and recommendations that will continue the momentum of Federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact COL Scott T. Horton, (717) 245–3907 or *scott.horton1@us.army.mil.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Interested persons may submit a written statement for consideration by the U.S. Army War College Subcommittee. Written statements should be no longer than two type-written pages and must address: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed below, at any point; however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided

to or considered by the U.S. Army War College Subcommittee until its next open meeting.

The Designated Federal Officer will review all timely submissions with the U.S. Army War College Subcommittee Chairperson, and ensure they are provided to members of the U.S. Army War College Subcommittee before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the U.S. Army War College Subcommittee Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the U.S. Army War College Subcommittee.

Scott T. Horton,

Colonel, U.S. Army, Executive Secretary.

[FR Doc. 2011–4874 Filed 3–3–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, March 15, 2011, from 10 a.m. to 12 p.m. Members of the public should submit their comments in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the Consortium for Ocean Leadership, 1201 New York Avenue, NW., 4th Floor, Washington, DC 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities; including, the review and development of Strategic Action Plans for the National Ocean Council.

Dated: February 24, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–4833 Filed 3–3–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Federal Loan Guarantee To Support Construction of Phase II of the Mid-Atlantic Power Pathway Transmission Line Project, in Maryland and Delaware

AGENCY: Department of Energy, Loan Programs Office.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings; Notice of Proposed Floodplain Action.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) (DOE/EIS–0465), pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations, and the DOE NEPA implementing procedures, to assess the potential environmental impacts of its proposed action of issuing a Federal loan guarantee to Pepco Holdings, Inc. (PHI). Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva), both subsidiaries of PHI, submitted an application to DOE under the Federal loan guarantee program pursuant to the Energy Policy Act of 2005 (EPAct 2005) to support construction of Phase II of the Mid-Atlantic Power Pathway (MAPP) transmission line project. PHI proposes to develop Phase II of the MAPP project, an approximately 100-mile electric transmission line from the Chalk Point Substation in Prince George's County, Maryland, to the Indian River Substation in Sussex County, Delaware, using a High Voltage Direct Current (HVDC) transmission system.

The EIS will evaluate the potential environmental impacts of the issuance of a DOE Loan Guarantee for PHI's proposed MAPP project and the range of reasonable alternatives.

The purposes of this Notice of Intent are to inform the public about DOE's proposed action, invite public participation in the EIS process, announce plans for public scoping meetings, and solicit public comments for consideration in establishing the scope and content of the EIS. DOE hereby provides notice of a proposed action located in part in a floodplain and that DOE will include a floodplain assessment in the EIS.

DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

DATES: The public scoping period will begin with publication of this Notice of Intent and end on April 4, 2011. To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be postmarked or e-mailed by April 4, 2011 to ensure consideration. Late comments will be considered to the extent practicable.

ADDRESSES: Public comments can be submitted electronically or by U.S. Mail. Written comments on the proposed EIS scope should be signed and addressed to the NEPA Document Manager for this project: Mr. Doug Boren, Loan Programs Office (LP–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Electronic submission of comments is encouraged due to processing time required for regular mail. Comments can be submitted electronically by sending an e-mail to: *MAPP–EIS@hq.doe.gov.* All electronic and written comments should reference DOE/EIS–0465.

DOE will conduct three public scoping meetings in the vicinity of the proposed MAPP project at which government agencies, private-sector organizations, and the general public are invited to provide comments or suggestions with regard to the alternatives and potential impacts to be considered in the EIS. The date, time, and location of the public scoping meetings will be announced in local news media and on the DOE Loan Programs Office "NEPA Public Involvement" Web site (*http://www.lgprogram.energy.gov/NEPA_PI.html*) and the DOE NEPA Website "Public Participation" Calendar (*http://nepa.energy.gov/calendar.htm*) at least 15 days prior to the date of the meetings.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this EIS, the public scoping meetings, or to receive a copy of the draft EIS when it is issued, contact Doug Boren by telephone: 202–287–5346; or electronic mail: *Douglas.Boren@hq.doe.gov.* For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA

Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone: 202–586–4600; facsimile: 202–586–7031; electronic mail: *askNEPA@hq.doe.gov;* or leave a toll-free message at 800–472–2756.

Additional information is available on the DOE Loan Programs Office "NEPA Public Involvement" Web site (*http://www.lgprogram.energy.gov/NEPA_PI.html*) and the DOE NEPA Web site (*http://nepa.energy.gov/*).

SUPPLEMENTARY INFORMATION:

Background

EPAct 2005 established a Federal loan guarantee program for eligible energy projects that employ innovative technologies. Title XVII of EPAct 2005 authorizes the Secretary of Energy to make loan guarantees for a variety of types of projects, including those that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." The two principal goals of the loan guarantee program are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. On June 30, 2008, the DOE Loan Guarantee Program Office issued a solicitation for projects employing energy efficiency, renewable energy, and advanced transmission and distribution technologies that constitute New or Significantly Improved Technologies. Pepco and Delmarva submitted an application to DOE for a loan guarantee in February 2009, to support construction of Phase II of the MAPP project.

Phase II of the MAPP project would incorporate new smart grid technology that includes an HVDC system; microprocessor-based relays; digital fault recorders; and phasor measurement units. The smart grid technology to be incorporated into the MAPP project would promote the transmission of energy over the line more efficiently and gives PJM Interconnection, L.L.C. (PJM), the area electric grid operator, additional control over power flows and power stability in the eastern portion of PJM. The project would provide a solution to critical reliability and congestion issues triggered by limited transmission capacity in PJM.

Due to the number of jurisdictions within PJM with Renewable Portfolio Standards, the future amount of renewable energy generation within PJM is expected to increase. By reducing grid congestion and increasing grid efficiency, the MAPP project enables the potential expansion of clean energy sources and renewables into the system, and may allow for the decommissioning of older electric generation units.

Purpose and Need for Agency Action

The purpose and need for action by DOE is to comply with its mandate under EPAct 2005 by selecting eligible projects that meet the goals of the Act, as summarized above. The EIS will inform DOE's decision whether to issue a loan guarantee to PHI to support the construction of the proposed MAPP project.

Proposed Action

DOE's proposed action is to issue a loan guarantee to PHI to support construction of Phase II of the MAPP project. Phase II of the MAPP project can be separated into four segments. The first segment is a proposed 500 kilovolt (kV) alternating current (AC) transmission line from the existing Chalk Point Substation, in Prince George's County, Maryland, crossing the Patuxent River to a proposed AC-to-direct current (DC) converter station (Chestnut Converter) in Calvert County, Maryland. This segment is approximately 10.6 miles long and would be installed overhead within an existing transmission line right-of-way (ROW).

The second segment would be from the Chestnut Converter station to a proposed converter station (Gateway Converter) in Wicomico County, Maryland. Segment two would consist of two, 320 kV, DC transmission circuits and would be installed underground within existing ROW in Calvert County and then under the Chesapeake Bay and the Choptank River, and would cross the Delmarva Peninsula overhead through Dorchester County, Maryland, to the Gateway Converter in Wicomico County, Maryland. The Calvert County underground portion of the circuits will be approximately 2.6 miles long and the submarine crossing of the bay and river would be approximately 39 miles. Once this segment makes landfall in Dorchester County, Maryland, it would be installed underground for approximately one mile and then overhead for approximately 14 miles, crossing the Nanticoke River near the town of Vienna, Maryland, before ending at the proposed Gateway Converter. This entire segment would be located within new transmission line ROW.

Segment three consists of one of the two DC circuits continuing overhead past the Gateway Converter in Wicomico County to a proposed converter station (Mission Converter) in Sussex County, Delaware. This segment would be approximately 26 miles, installed above ground, and located within an existing transmission line ROW.

Segment four is a 230 kV AC overhead transmission line constructed between the proposed Mission Converter and the existing Indian River Substation in Sussex County, Delaware. This segment would be located within existing ROW and is approximately 6 miles in length. In addition, segment four would also include two approximately 1-mile 230 kV AC overhead transmission lines to be constructed between the proposed Mission Converter and an existing transmission line to the south. These 1-mile transmission lines would be installed on applicant owned property but would include new transmission structures. Additional project descriptions and project location maps (depicting the proposed route by county) may be found on the applicant's Web site at *http://www.powerpathway.com.*

Alternatives

DOE currently plans to analyze in detail the MAPP project proposed by PHI and the No Action alternative. As appropriate, DOE will also analyze alternatives to portions of the project, such as alternative routes and river crossings, which could lessen or avoid impacts to affected resources and mitigation measures.

Under the No Action alternative, DOE would not provide the loan guarantee to PHI. In this case, PHI may have difficulty obtaining financing for the MAPP project, which may result in a delay or cancellation of the project. Although PHI may still pursue the project without the loan guarantee, for purposes of this NEPA analysis, the No Action alternative will be a no project or no build scenario.

Notice of Floodplain Involvement

DOE hereby provides notice of a proposed DOE action in a floodplain pursuant to DOE Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022). Portions of the proposed project cross the Patuxent River, the Chesapeake Bay, the Choptank River, the Nanticoke River and other water bodies, and their associated floodplains along the entire length of the proposed transmission line. DOE will prepare a floodplain assessment as required by DOE

regulations and include it in the EIS. Interested parties may comment during the scoping period following the publication of this NOI and will also be able to comment on the floodplain assessment when the Draft EIS is published.

Preliminary Identification of Environmental Issues

DOE has tentatively identified the following environmental resource areas for consideration in the EIS. This list is not intended to be all-inclusive nor to predetermine the potential environmental impacts or their significance:

Air quality
Greenhouse gas emissions and climate change
Energy use and production
Water resources, including groundwater and surface waters
Wetlands and floodplains
Geological resources
Ecological resources, including threatened and endangered species and species of special concern
Cultural resources, including historic structures and properties; sites of religious and cultural significance to Tribes; and archaeological resources
Land use
Coastal zone management
Visual resources and aesthetics
Transportation and traffic
Noise and vibration
Hazardous materials and solid waste management
Human health and safety
Accidents and terrorism
Socioeconomics, including impacts to community services
Environmental justice

DOE invites comments on whether additional resource areas or potential issues should be considered in the EIS.

Public Scoping Process

To ensure that all issues related to DOE's proposed action are addressed, DOE seeks public input to define the scope of the EIS. Interested government agencies, private-sector organizations, and the general public are encouraged to submit comments concerning the content of the EIS, issues and impacts that should be addressed, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues for analysis.

DOE has coordinated with Federal and state agencies in the project area and expects that the United States Army Corps of Engineers will be a cooperating agency for the preparation of this EIS. DOE invites any additional agencies with jurisdiction by law or special expertise to be cooperating agencies in the preparation of this EIS.

The public scoping meetings will be announced as described in the **DATES** and **ADDRESSES** sections above. Members of the public and representatives of groups and Federal, state, local, and Tribal agencies are invited to attend. The meetings will include both a formal opportunity to present oral comments and an informal session during which DOE and PHI personnel will be available for discussions. Displays and other information about the proposed agency action, the EIS process, and PHI's proposed MAPP project will be available. Individuals who wish to make oral comments during one of the scoping meetings may register at the meeting. To ensure that everyone who wishes to has a turn to speak, DOE may need to limit speakers to three to five minutes initially, but will provide additional opportunities as time permits. Written comments may be submitted to DOE officials at the scoping meetings.

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

Owen Barwell,

Acting Executive Director, Loan Programs Office.

[FR Doc. 2011–4878 Filed 3–3–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–73–000]

Commission Information Collection Activities (FERC–73); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection renewal and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments on the collection of information are due by May 3, 2011.

ADDRESSES: Comments may be filed either electronically (e-Filed) or in paper format, and should refer to Docket No. IC11–73–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC11–73. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 73 "Oil Pipelines Service Life Data" (OMB No. 1902–0019) is used by the Commission to implement the statutory provisions of Sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46277 (September 13, 1977). The Commission has authority over interstate oil pipelines as stated in the Interstate Commerce Act, 49 U.S.C. 6501 et al. As part of the information necessary for the subsequent investigation and review of an oil pipeline company's proposed depreciation rates, the pipeline companies are required to provide service life data as part of their data submissions if the proposed depreciation rates are based on the remaining physical life calculations.

This service life data is submitted on FERC Form No. 73.

The data submitted are used by the Commission to assist in the selection of appropriate service lives and book depreciation rates. Book depreciation rates are used by oil pipeline companies to compute the depreciation portion of their operating expense which is a component of their cost of service which in turn is used to determine the transportation rate to assess customers. FERC staff's recommended book depreciation rates become legally binding when issued by Commission order. These rates remain in effect until a subsequent review is requested and the outcome indicates that a modification is justified. The Commission implements these filings in 18 CFR parts 347 and 357.

Action: The Commission is requesting a three-year approval of the collection of data with no changes to the information that is collected on Form 73. This is a mandatory information collection requirement.

Burden Statement: Public reporting burden for this collection is estimated as follows:

Data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
FERC Form 73	3	1	40	120

The estimated total cost to respondents is $8,214 [120 hours/2080 hours [1] per year, times $142,372 [2] equals $8,214]. The cost per respondent annually is $2,738.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, 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 *e.g.* permitting electronic submission of responses.

[1] Number of hours an employee works each year.

[2] Average annual salary per employee.

Dated: February 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4858 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC11–520–000, IC11–561–000, and IC11–566–000]

Commission Information Collection Activities, Proposed Collections; Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collections and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection activities described below.

DATES: Comments in consideration of the collection of information are due May 3, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket Nos. IC11–520–000, IC11–561–000, and IC11–566–000. (For comments that only pertain to one of the collections, specify the appropriate collection and the related docket number.) Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp*. eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp*. First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp*, to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in these dockets may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp*, by searching on Docket Nos. IC11–520, IC11–561, and IC11–566. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone

at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The Federal Power Act (FPA) as amended by the Public Utility Regulatory Policies Act of 1978 (PURPA) mandates Federal oversight and approval of certain electric corporate activities and put in place related information filing requirements. The FERC–520, the Form 561 and the FERC–566 are the data collections currently helping ensure that FPA-mandated oversight can occur and that neither public nor private interests are adversely affected by the electric activities the FPA provisions cover.

The implementing processes and regulatory requirements for the collections are codified in Chapter 18 of the Code of Federal Regulations (CFR).

Information collection number	OMB Number	CFR Cite	Statutory cite
FERC–520	1902–0083	18 CFR Part 45.	FPA Section 305, as amended by PURPA Title II, section 211 (16 U.S.C. 825d)
Form 561	1902–0099	18 CFR 46.6 and 131.31	
FERC–566	1902–0114	18 CFR 46.3.	

To clarify the aim and better publicize the relationships among these information activities, FERC is combining its processes for noticing and renewing its OMB authority to conduct these information collections.

Overview of the Three Forms. The FERC–520, Form 561 and FERC–566 provide views into complex electric corporate activities and serve to safeguard public and private interests, as the FPA requires. The Commission can use its enforcement authority when violations and omissions of FPA requirements occur.

FERC–520. The FERC–520, "Application for Authority to Hold Interlocking Directorate Positions" is an application requesting FERC authorization for board members of regulated electric utilities that plan to simultaneously hold positions on the corporate boards of related or similar businesses. This corporate activity is known as an "interlocked directorate." The FERC–520 originates in FPA Section 305(b) of the FPA. This part of the FPA makes the holding of certain defined interlocking corporate positions unlawful unless the Commission has authorized the interlocks to be held. Before assuming an interlocked board position, an applicant must demonstrate that neither public nor private interests will be adversely affected by the holding of the position. The FERC–520 identifies the applicant and describes the various interlocking positions the applicant seeks authorization to hold. Moreover, the form collects information related to the applicant's financial interests, other officers and directors of the firms involved, and the nature of business relationships among the firms.

FERC allows two types of FERC–520 applications to implement the FPA requirements for holding interlocked positions. The first, in 18 CFR 45.8, is a "full" application. "Full" applications are made by (1) an officer or director of more than one public utility; (2) an officer or director of a public utility and of a public utility securities underwriter; or (3) an officer or director of a public utility and of an electrical equipment supplier to that utility. They provide detailed information about the position for which authorization is sought, including a description of duties, estimated time devoted to the position, and the applicant's indebtedness to the public utility.

The second type of FERC–520 application, in 18 CFR 45.9, is an "informational" application for automatic authorization. These "informational applications" are made by (1) An officer or director of two or more public utilities where the same holding company owns, directly or indirectly, wholly or in part, the other public utility; (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other; or (3) an officer or director of more than one public utility, if such person is already authorized under Part 45 to hold different positions where the interlock involves affiliated public utilities.

As part of the FERC–520 application process, the FERC requires notices of change if the applicant resigns or withdraws from a Commission-authorized interlocked position or if the applicant is not re-elected or re-appointed to the interlocked position.

Form 561. The Commission uses the FERC Form 561, "Annual Report of Interlocking Positions" to implement the FPA requirement that those who are authorized to hold interlocked directorates annually disclose all the interlocked positions they held the prior year. The positions that must be disclosed in the Form 561 are those public utility officers and directors hold with financial institutions, insurance companies, utility equipment and fuel providers, and with any of an electric utility's twenty largest purchasers of electric energy. The FPA specifically defines most of the information elements in the Form 561, including the information that must be filed, the required filers, the directive to make the information available to the public, and the filing deadline. The Commission determined administrative aspects of the Form 561 such as the filing format and instructions for filling out the form.

FERC–566. The FERC–566 "Annual Report of a Utility's Twenty Largest Purchasers" implements FPA requirements that each public utility annually publish a list of the purchasers of the twenty largest annual amounts of electric energy sold by such public utility during any one of three previous calendar years pursuant to rules prescribed by the Commission. The public disclosure of this information provides officers and directors with the information necessary to determine whether any of the entities with whom they are related are any of the largest twenty purchasers of the public utility with which they are affiliated. Similar to the statutory detail in the FPA for the FERC 561, the FPA identifies who must file the FERC–566 report and sets the filing deadline. Additionally, the FPA specifies that those entities required to report who have a holding company system can calculate their total volumes of energy sold by including the amounts sold by utilities within their holding company system. The FERC details in its regulations special rules about the information to be provided in the FERC–566 report. For example, FERC allows required filers to file estimates of volumes based on actual information available to them if actual volumes are not available by the statutory due date. However, the FERC also requires revisions of those filed estimates with final numbers by March 1st.

Filings Information. Under FERC regulations, respondents must file their FERC–520, Form 561 and FERC–566 in various formats, including electronically via the Commission's eFiling web page. Most are submitted this way.

FERC has especially encouraged Form 561 respondents to file their forms via the FERC eFiling system and to use a Microsoft *Excel* version of the Form 561. The Microsoft *Excel* version of the Form 561 has been available since 1998.

There have been many efforts since 1998 to use evolving and advanced features of the *Excel* software to make filling the form out easier and compiling the filed information more easily. The following table shows the number of filings FERC has received for each of the three information collections.

NUMBER OF FILINGS RELATED TO INTERLOCKED POSITIONS AND REPORTS OF UTILITIES' TWENTY LARGEST CUSTOMERS 2008–2010

Filing name	2008	2009	2010
FERC–520 (Total)	689	600	594
○ Initial	24	36	26
○ Informational	469	326	335
○ Notice of Change	196	238	233
Form 561	2,441	2,420	2,432
Form 566	403	457	443

Action: The FERC is requesting a three-year extension of the current expiration dates for these three information collections. It proposes to continue to explore making the filing of the FERC–520, FERC Form 561 and FERC–566 more efficient by evaluating and possibly adopting more modern information transfer technology.

Burden Statement: Public reporting burden for this collection is estimated in the following table.

ESTIMATED BURDEN OF FERC COLLECTIONS RELATED TO INTERLOCKED POSITIONS AND REPORTS OF UTILITIES' TWENTY LARGEST CUSTOMERS

Form name	Number of respondents annually (average) (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
FERC–520	406[1] (total)			12,680
○ Initial	29	1	51.8	1,502
○ Informational	377	1	29.5	11,122
○ Notice of Change	222	1	.25	56
Form 561	2,431	1	.25	608
FERC–566	434	1	6	2,604
Total				15,873

The estimated total cost to FERC–520 respondents is $867,922. [12,680 hours/2080 hours[2] per year, times $142,372[3] equals $867,922]. The cost per FERC–520 respondent annually is $2,138.

The estimated total cost to FERC–561 respondents is $41,616. [608 hours/2080 hours per year, times $142,372 equals $41,616]. The cost per FERC–561 respondent annually is $68.

The estimated total cost to FERC–566 respondents is $178,239. [2,604 hours/2080 hours per year, times $178,239 equals $178,239]. The cost per FERC–566 respondent annually is $68.

The estimated total cost to respondents for these three information collections is $1,087,777.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collections 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 collections 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 *e.g.* permitting electronic submission of responses.

Dated: February 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4859 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

[1] This number of unique respondents corresponds to the number of initial filers plus the number of informational filers.

[2] Number of hours an employee works each year.

[3] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13237–002]

Whitman River Dam, Inc.

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* 13237–002.

c. *Date Filed:* February 14, 2011.

d. *Applicant:* Whitman River Dam, Inc.

e. *Name of Project:* Crocker Dam Hydro Project.

f. *Location:* On the Whitman River, in the Town of Westminster, Worcester County, Massachusetts. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Robert T. Francis, P.O. Box 145, 10 Tommy Francis Road, Westminster, MA 01473, (978) 874–1010, *bfrancis@verizon.net.*

i. *FERC Contact:* Jeff Browning, (202) 502–8677 or *Jeffrey.Browning@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: April 15, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The Crocker Dam Hydro Project would consist of: (1) The existing 520-foot-long, 38.5-foot-high Crocker Pond dam; (2) an existing 99.7-acre impoundment with a normal water surface elevation of 751 feet msl; (3) an existing intake structure equipped with 42-inch-diameter penstock; and (4) a new powerhouse located adjacent to the dam containing one 145-kilowatt turbine generating unit. The proposed project is estimated to generate an average of 887,450 kilowatt-hours annually.

The applicant proposes to construct a new powerhouse downstream of the dam connected to the existing penstock via a short extension.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Massachusetts State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (e.g., if scoping is waived, the schedule would be shortened).

Issue Deficiency Letter: April 2011.
Issue Notice of Acceptance: June 2011.
Issue Scoping Document: July 2011.
Issue Notice ready for environmental analysis: September 2011.
Issue Notice of the availability of the EA: February 2012.

Dated: February 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4963 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12790–001]

Andrew Peklo III; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* 12790–001.

c. *Date Filed:* February 16, 2011.

d. *Applicant:* Andrew Peklo III.

e. *Name of Project:* Pomperaug Hydro Project.

f. *Location:* On the Pomperaug River, in the Town of Woodbury, Litchfield County, Connecticut. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Andrew Peklo III, 29 Pomperaug Road, Woodbury, CT 06798, (203) 263–4566, *themill@charter.net.*

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *Stephen.kartalia@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's

policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 18, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. *The Pomperaug Hydro Project would consist of:* (1) The existing 90-foot-long, 15-foot-high Pomperaug River dam equipped with three existing gates; (2) an existing 4-acre impoundment with a normal water surface elevation of 226 feet msl; (3) an existing 40-foot-long, 42 to 50-inch-diameter penstock; and (4) an existing powerhouse integral to the dam containing one new 76-kilowatt turbine generating unit. Project power would be transmitted through a new 35-foot-long, 260-kilovolt underground transmission line. The proposed project is estimated to generate an average of 300,000 kilowatt-hours annually.

The applicant proposes to: (1) Rehabilitate the existing gates including constructing a new intake structure with a trashrack; and (2) construct a new fish passage facility adjacent to the existing powerhouse.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Connecticut State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (*e.g.,* if scoping is waived, the schedule would be shortened).

Issue Deficiency Letter	April 2011.
Issue Notice of Acceptance	June 2011.
Issue Scoping Document ..	July 2011.
Issue Notice ready for environmental analysis.	September 2011.
Issue Notice of the availability of the EA.	February 2012.

Dated: February 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4857 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–91–000]

Monroe Gas Storage Company, LLC; Notice of Application

Take notice that on February 18, 2011, Monroe Gas Storage Company, LLC (Monroe), 3773 Cherry Creek North Drive, Suite 1000, Denver, CO 80209, filed pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, an abbreviated application for an amendment to its certificate of public convenience and necessity issued on December 21, 2007, Docket No. CP07–406–000; authorizing Monroe to make changes to the certificated design of the Monroe Gas Storage Project.

Specifically, through this Application, Monroe seeks authorization to (1) relocate the currently authorized Well MGS–6–E–H to a new well site and bottom hole location, and (2) convert the existing Well MGS–6 to an observation well. Monroe also requests an extension of time to place all of the project facilities into service to a date 90 days from the issued date of the order. In conjunction with these requests, Monroe proposes to change the designation of the relocated well from MGS–6–E–H to MGS–6–W–D and the converted well from MGS–6–E–H to MGS–O6.

Monroe states that the proposed amendment will not change its currently certificated authority to provide about 12.0 billion cubic feet (Bcf) of high-deliverability working gas storage capacity, with about 4.46 Bcf of base gas. Nor is any change proposed in Monroe's certificated capability for receiving and injecting gas at maximum rates of up to 445 million cubic feet per day (MMcf/d) and withdrawing and delivering gas at maximum rates of up to 465 MMcf/d.

Any questions regarding the application should be directed to Fred Witsell, Monroe Gas Storage Company, LLC, 3773 Cherry Creek North Drive, Suite 1000, Denver, CO 80209, (303) 815–1010, or Erik J.A. Swenson, Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004–2623, (202) 622–4555.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 14, 2011.

Dated: February 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4965 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2106–059]

McCloud-Pit Project; Notice of Availability of the Final Environmental Impact Statement for the Mccloud-Pit Hydrolectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR Part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the application for license for the McCloud-Pit Hydroelectric Project (FERC No. 2106), located on the McCloud and Pit Rivers in Shasta County, California and has prepared a final environmental impact statement (EIS) for the project. The project occupies 1651.4 acres of federal lands administered by the U.S. Department of Agriculture-Forest Service.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the McCloud-Pit Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

Copies of the final EIS are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "e-Library" link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, please contact Emily Carter at (202) 502–6512 or at *emily.carter@ferc.gov.*

Dated: February 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4966 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1805–000.

Applicants: Arlington Storage Company, LLC.

Description: Arlington Storage Company, LLC submits tariff filing per 154.203: ASC Baseline Tariff Resubmission in Compliance with RP10–1324 to be effective 2/25/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5098.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: RP11–1806–000.

Applicants: Arlington Storage Company, LLC.

Description: Arlington Storage Company, LLC submits tariff filing per 154.602: ASC Cancellation of First Revised Vol. No. 1 in Compliance with RP10–1324 to be effective 2/25/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: RP11–1807–000.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits tariff filing per 154.204: Semi Annual FLRP–Spring 2011 to be effective 4/1/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5140.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: RP11–1808–000.

Applicants: Guardian Pipeline, L.L.C.

Description: Guardian Pipeline, L.L.C. submits tariff filing per 154.204: EPC Semi Annual Adjustment to be effective 4/1/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5143.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: RP11–1809–000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits tariff filing per 154.403(d)(2): Fuel Retention Rates to be effective 4/1/2011.

Filed Date: 02/28/2011.
Accession Number: 20110228–5046.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1810–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.204: Elk City Tariff Sheet Filing to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5047.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1811–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Millennium Pipeline Company, LLC requests extension of time to complete Annual RAM filing under section 32 of its FERC Tariff.
Filed Date: 02/28/2011.
Accession Number: 20110228–5064.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1812–000.
Applicants: T.W. Phillips Pipeline Corp.
Description: T.W. Phillips Pipeline Corp. submits tariff filing per 154.402: ACA Annual Adjustment Filing to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5071.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

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

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

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

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

Dated: February 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4838 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1793–000.
Applicants: Bobcat Gas Storage.
Description: Bobcat Gas Storage submits tariff filing per 154.204: Netting and Trading Standards to be effective 3/25/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5052.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: RP11–1794–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate—April 1—CERC—Oklahoma to be effective 4/1/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5103.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: RP11–1795–000.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System, L.L.C. submits tariff filing per 154.203: Negotiated Rate Agreement Compliance Filing under CP10–4 Florida Power Corp to be effective 4/1/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5111.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: RP11–1796–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Name Change for Mirant Canal to be effective 3/25/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5161.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: RP11–1797–000.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Pipe Line LLC submits tariff filing per 154.204: Sabine Pipe Line LLC FRP & UFRP Tariff Filing to be effective 4/1/2011.
Filed Date: 02/24/2011.
Accession Number: 20110224–5046.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: RP11–1798–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate—April 1—CERC—Arkansas to be effective 4/1/2011.
Filed Date: 02/24/2011.
Accession Number: 20110224–5063.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: RP11–1799–000.
Applicants: Freebird Gas Storage, L.L.C.
Description: Freebird Gas Storage, L.L.C. submits tariff filing per 154.602: Freebird Gas Storage Cancellation Filing to be effective 2/25/2011.
Filed Date: 02/24/2011.
Accession Number: 20110224–5072.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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

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

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

Dated: February 24, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4839 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1800–000.

Applicant: CenterPoint Energy Gas Transmission Company, LLC.

Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate—April 1—CERC—Louisiana to be effective 4/1/2011.

Filed Date: 02/24/2011.

Accession Number: 20110224–5108.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: RP11–1801–000.

Applicant: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: Negotiated Rate 02–25–11 BP to be effective 3/1/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5000.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: RP11–1802–000

Applicant: Northwest Pipeline GP

Description: Northwest Pipeline GP submits tariff filing per 154.403(d)(2): NWP Fuel Factor Filing, Effective April 1, 2011 to be effective 4/1/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5001.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: RP11–1803–000.

Applicant: CenterPoint Energy Gas Transmission Company, LLC.

Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate—April 1—CERC—Texas to be effective 4/1/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5030.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: RP11–1804–000.

Applicant: Mojave Pipeline Company, LLC.

Description: Mojave Pipeline Company, LLC submits tariff filing per 154.204: Transportation Service Agreement to be effective 3/1/2011.

Filed Date: 02/25/2011.

Accession Number: 20110225–5042.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: CP11–103–000.

Applicant: Texas Eastern Transmission LP.

Description: Abbreviated application to abandon service on Offshore Supply Laterals of Texas Eastern Transmission LP.

Filed Date: 02/23/2011.

Accession Number: 20110223–5185.

Comment Date: 5 p.m. Eastern Time on Monday, March 7, 2011.

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

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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4841 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

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

Docket Numbers: EC11–36–000

Applicants: BP Wind Energy North America Inc., Dominion Fowler Ridge Wind II, LLC

Description: Supplemental Information of BP Wind Energy North America Inc. and Dominion Fowler Ridge Wind II, LLC.

Filed Date: 02/18/2011

Accession Number: 20110218–5153

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011

Docket Numbers: EC11–45–000

Applicants: Clean Energy Systems, Inc., AES Placerita, Incorporated, AES California Management Co., Inc.

Description: Application of AES California Management Co., Inc., *et al.* for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act and Request for Confidential Treatment of Transaction Documents, Expedited Consideration and Waivers.

Filed Date: 02/18/2011

Accession Number: 20110218–5143

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011

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

Docket Numbers: ER99–4124–027; ER99–4124–028

Applicants: Arizona Public Service Company

Description: Supplemental of Arizona Public Service Company.

Filed Date: 02/18/2011

Accession Number: 20110218–5145

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011

Docket Numbers: ER10–2738–001

Applicants: The Empire District Electric Company

Description: Supplement to Notice of Non-Material Change in Status of The Empire District Electric Company.

Filed Date: 02/22/2011

Accession Number: 20110222–5109

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2140–001

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Supplemental filing re cost responsibility assignments, to be effective 2/15/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5156

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2588–001

Applicants: Power Receivable Finance, LLC

Description: Power Receivable Finance, LLC submits tariff filing per 35.17(b): PRF Substitute First Revised MBR Tariff to be effective 2/28/2011.

Filed Date: 02/08/2011

Accession Number: 20110208–5154

Comment Date: 5 p.m. Eastern Time on Tuesday, March 1, 2011

Docket Numbers: ER11–2595–001

Applicants: CalPeak Power—Border LLC

Description: CalPeak Power—Border LLC submits tariff filing per 35: Border—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5106

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2596–001

Applicants: CalPeak Power—El Cajon LLC

Description: CalPeak Power—El Cajon LLC submits tariff filing per 35: El Cajon—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5110

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2597–001

Applicants: CalPeak Power—Panoche LLC

Description: CalPeak Power—Panoche LLC submits tariff filing per 35: Panoche—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5123

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2600–001

Applicants: CalPeak Power—Vaca Dixon LLC

Description: CalPeak Power—Vaca Dixon LLC submits tariff filing per 35: Vaca Dixon—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5129

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2602–001

Applicants: CalPeak Power LLC

Description: CalPeak Power LLC submits tariff filing per 35: CalPeak Power—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5131

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2604–001

Applicants: Commonwealth Chesapeake Company LLC

Description: Commonwealth Chesapeake Company LLC submits tariff filing per 35: Chesapeake—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5138

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2605–001

Applicants: Tyr Energy LLC

Description: Tyr Energy LLC submits tariff filing per 35: Tyr—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5144

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2608–001

Applicants: CalPeak Power—Enterprise LLC

Description: CalPeak Power—Enterprise LLC submits tariff filing per 35: Enterprise—Supplement to Notice of Non-Material Change to be effective 3/4/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5118

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2609–001

Applicants: Tenaska Washington Partners, L.P.

Description: Tenaska Washington Partners, L.P. submits tariff filing per 35: Supplement to Request for Category 1 Status to be effective 3/4/2011.

Filed Date: 02/17/2011

Accession Number: 20110217–5104

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011

Docket Numbers: ER11–2921–000

Applicants: Southwestern Public Service Company

Description: Southwestern Public Service Company submits tariff filing per 35: 2–18–11_RS118 Compliance Filing SPS–Sharyland to be effective 8/1/2010.

Filed Date: 02/18/2011

Accession Number: 20110218–5139

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011

Docket Numbers: ER11–2923–000

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 02–18–11 Att. Q amendment to be effective 4/1/2011.

Filed Date: 02/18/2011

Accession Number: 20110218–5140

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011

Docket Numbers: ER11–2924–000

Applicants: Denver Energy, LLC

Description: Denver Energy, LLC submits tariff filing per 35.12: New

Company's Tarriff (Initial Tariff Baseline) to be effective 2/22/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5000

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2925–000

Applicants: Pacific Gas and Electric Company

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): CCSF Crystal Springs Transmission Facilities Agreement to be effective 2/22/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5001

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2926–000

Applicants: Oklahoma Gas and Electric Company

Description: Application of Oklahoma Gas and Electric Company

Filed Date: 02/18/2011

Accession Number: 20110218–5168

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011

Docket Numbers: ER11–2927–000

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Correction to MR1—Appendix E from Baseline eTariff Filing to be effective 8/30/2010.

Filed Date: 02/22/2011

Accession Number: 20110222–5028

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2928–000

Applicants: Florida Power & Light Company

Description: Florida Power & Light Company submits tariff filing per 35.12: FPL Rate Schedule FERC No. 318 between FPL and FKEC to be effective 12/31/9998.

Filed Date: 02/22/2011

Accession Number: 20110222–5064

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2929–000

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing, to be effective 4/25/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5065

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2930–000

Applicants: Cleco Power LLC

Description: Cleco Power LLC submits tariff filing per 35.13(a)(2)(iii): Attachment E Feb 2011 to be effective 2/22/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5076

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2931–000

Applicants: Commonwealth Edison Company, Commonwealth Edison Company of Indiana,

Description: Commonwealth Edison Company Notice of Termination of Rate Schedule and Joint Motion to Withdraw Pleadings and Vacate Initial Decision.

Filed Date: 02/22/2011

Accession Number: 20110222–5089

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2932–000

Applicants: NorthWestern Corporation

Description: NorthWestern Corporation submits tariff filing per 35: Revised Attachments C and K to FERC Open Access Transmission Tariff Vol. 2 (SD) to be effective 4/10/2008.

Filed Date: 02/22/2011

Accession Number: 20110222–5130

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2933–000

Applicants: MidAmerican Energy Company

Description: MidAmerican Energy Company submits tariff filing per 35.13(a)(2)(iii): Engineering and Procurement Agreement—Rate Schedule 117 to be effective 2/23/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5143

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

Docket Numbers: ER11–2934–000

Applicants: Public Service Company of Oklahoma, Southwestern Electric Power Company

Description: Public Service Company of Oklahoma submits tariff filing per 35.13(a)(2)(iii): 20110222 TCA Third Rev to be effective 5/1/2011.

Filed Date: 02/22/2011

Accession Number: 20110222–5173

Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011

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

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

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

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

Dated: February 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4843 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1321–001.

Applicants: Freebird Gas Storage, L.L.C.

Description: Freebird Gas Storage, L.L.C. submits tariff filing per 154.205(a): Freebird Gas Tariff Withdrawal Filing to be effective N/A.

Filed Date: 02/24/2011.

Accession Number: 20110224–5109.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: RP11–1591–001.

Applicants: Golden Pass Pipeline LLC.

Description: Golden Pass Pipeline LLC submits tariff filing per 154.203: Revised TRVs Include omitted tariff record section titles to be effective 3/1/2011.

Filed Date: 02/24/2011.

Accession Number: 20110224–5124.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: CP97–738–010.

Applicants: Enogex LLC.

Description: Petition for order amending limited jurisdiction of Enogex LLC.

Filed Date: 02/04/2011.

Accession Number: 20110204–5095.

Comment Date: 5 p.m. Eastern Time on Friday, March 04, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4842 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1189–002.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits tariff filing per 154.203: NWP Index-Based Capacity Release to be effective 4/1/2011.

Filed Date: 02/23/2011.

Accession Number: 20110223–5151.

Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: RP10–877–003.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Request of Cameron Interstate Pipeline, LLC for Additional Time to Make Compliance Filing.

Filed Date: 02/23/2011.

Accession Number: 20110223–5093.

Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: RP10–877–005.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Request of Cameron Interstate Pipeline, LLC for Additional Time to Make Compliance Filing.

Filed Date: 02/23/2011.

Accession Number: 20110223–5093.

Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: RP10–1400–003.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Company submits tariff filing per 154.203: Amendment to Order No. 714 Compliance Filing to be effective 11/1/2010.

Filed Date: 02/17/2011.

Accession Number: 20110217–5052.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: RP11–1700–001.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits tariff filing per 154.203: DCP—Off-System Capacity—Compliance to be effective 2/12/2011.

Filed Date: 02/22/2011.

Accession Number: 20110222–5016.

Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 24, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4840 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12737–002]

Jordan Hydroelectric Limited Partnership; Notice of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 447897), the Office of Energy Projects has reviewed the application for an original license for the 3.7-megawatt (MW) Gathright Hydroelectric Project located on the Jackson River in Alleghany County, Virginia, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of licensing the project and conclude that issuing a license for the project, with appropriate environmental measures, would not constitute a major Federal

action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments on the EA should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Gathright Hydroelectric Project No. 12737–002" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information contact Allyson Conner at (202) 502–6082.

Dated: February 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4967 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project No. 13049–001]

Pacific Gas and Electric Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On January 31, 2011, Pacific Gas and Electric Company (PG&E) filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of developing incremental capacity at PG&E's licensed Rock Creek-Cresta Project (No. 1962), located on the North Fork Feather River upstream of Lake Oroville, near the towns of Belden, Tobin, and Storrie, in Plumas County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new single-unit powerhouse with a turbine and generator constructed on the right (west) abutment at the downstream side of the existing Rock Creek dam. The proposed project would have an expected capacity of 2.8 megawatts and an expected annual average energy production of 15 gigawatt-hours.

Applicant Contact: Mr. Randal S. Livingston, Vice President—Power Generation, Pacific Gas and Electric Company, 245 Market Street, MS N11E, P.O. Box 770000, San Francisco, CA 94177; *phone:* (415) 973–6950.

FERC Contact: Matt Buhyoff; *phone:* (202) 502–6824.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–1304913049–001) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4969 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13994–000]

Public Utility No. 1 of Snohomish County, WA; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 4, 2011, the Public Utility No. 1 of Snohomish County, Washington filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Hancock Creek Hydroelectric Project (project) to be located on Hancock Creek, near North Bend in King County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 7-foot-high, 62-foot-long diversion weir and intake structure; (2) an impoundment having a total storage capacity of one acre-foot at a normal maximum operating elevation of 2,171 feet mean sea level; (3) a 7,800-foot-long, 38-inch-diameter buried penstock; (4) a 2,600-square-foot powerhouse containing a single turbine/generator unit with an installed capacity of 6.0 megawatts; (5) a 125-foot-long, 10-foot-wide rip-rap open channel tailrace; (6) a switchyard containing a 4.16/34.5 three-phase step-up transformer; (7) a 2,000-foot-long, 34.5 kilovolt three-phase buried transmission line; and (8) appurtenant facilities. The estimated annual generation of the project would be 21,857.7 megawatt-hours.

Applicant Contact: Mr. Kim D. Moore, Assistant General Manager of Generation Resources; Public Utility No. 1 of Snohomish County; 2320 California Street; Everett, WA 98201; phone: 425–783–8606.

FERC Contact: Kelly Wolcott; phone: (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of

intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13994–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4962 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2713–082]

Erie Boulevard Hydropower, L.P; Notice of Settlement Agreement and Soliciting Comments

Take notice that the following Settlement Agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Comprehensive Settlement Agreement (Settlement) for the relicensing of the Oswegatchie River Hydroelectric Project.

b. *Project No.:* P–2713–082.

c. *Date Filed:* February 18, 2011.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Location:* The existing multi-development project is located on the Oswegatchie River in St. Lawrence County, New York. The project does not affect Federal lands.

g. Filed Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 Federal Power Act 16 USC 791 (a)–825(r)

h. *Applicant Contact:* Daniel Daoust, Erie Boulevard Hydropower, 33 West 1st Street, South, Fulton, NY, 13069; (315) 598–6131.

i. *FERC Contact:* John Baummer (202) 502–6837 or e-mail at *john.baummer@ferc.gov.*

j. Deadline for filing comments on the Settlement: *March 20, 2011.* Reply comments are due *March 30,* 2011. Comments and reply comments should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. Erie Boulevard Hydropower, L.P. (Erie) filed a Settlement signed by the Adirondack Mountain Club, Adirondack Park Agency, Clifton-Fine Economic Development Group, 5 Ponds Subcommittee, St. Lawrence County, New York State Department of Environmental Conservation, New York State Council of Trout Unlimited, U.S. Fish and Wildlife Service, the National Park Service and Erie (collectively, the Parties). The Settlement resolves among the Parties issues related to project operations, fisheries, wildlife, water quality, recreation, and cultural resources. The Parties request that the Commission accept and incorporate, without material modification, Sections 3.1 through 3.9 of the Settlement as numbered license articles.

l. A copy of the Settlement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support

Dated: February 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4964 Filed 3–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of the Final Site-Wide Environmental Impact Statement for the Y–12 National Security Complex

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the Department of Energy (DOE), announces the availability of the Final Site-Wide Environmental Impact Statement for the Y–12 National Security Complex (Final Y–12 SWEIS, DOE/EIS–0387). The Final Y–12 SWEIS analyzes the potential environmental impacts of ongoing and future operations and activities at Y–12, including alternatives for changes to site infrastructure and levels of operation (using production capacity as the key metric for comparison), and addresses public comments received on the Draft SWEIS and the Wetlands Assessment related to the proposed Haul Road extension corridor. Five alternatives are analyzed: No Action Alternative (maintain the status quo); Uranium Processing Facility (UPF) Alternative; Upgrade-in-Place Alternative; Capability-sized UPF Alternative; and the No Net Production/Capability-sized UPF Alternative. DOE NNSA has prepared the Final Y–12 SWEIS in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality

(CEQ) regulations that implement the procedural provisions of NEPA (40 CFR parts 1500–1508), and DOE regulations implementing NEPA (10 CFR part 1021). NNSA's Preferred Alternative for Y–12, as identified in the Draft and Final SWEIS, is the Capability-sized UPF Alternative.

DATES: NNSA will not issue any Record of Decision (ROD) based on the SWEIS before 30 days have passed from the publication of the Environmental Protection Agency's notice of availability.

ADDRESSES: Requests for additional information on the Final Y–12 SWEIS, including requests for copies of the document, should be directed to: Ms. Pam Gorman, Y–12 SWEIS Document Manager, Y–12 Site Office, 800 Oak Ridge Turnpike, Suite A–500, Oak Ridge, TN 37830, or by telephone: 865–576–9903. Additional information on the Y–12 SWEIS may be found at *http://www.y12sweis.com.*

For general information regarding the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the Internet through the DOE NEPA Web site at *http://www.nepa.energy.gov/*.

SUPPLEMENTARY INFORMATION: The continued operation of Y–12 is critical to DOE NNSA's Stockpile Stewardship Program and to preventing the spread and use of nuclear weapons worldwide. However, continued operation of Y–12 is made more difficult by the fact that most of the facilities at Y–12 are old, oversized, and inefficient. Because NNSA is required to maintain the safety and security of the Nation's nuclear weapons stockpile, and Y–12 is an important part of this effort, all alternatives assumed that NNSA will continue to operate Y–12 as part of the Nation's nuclear security enterprise for the foreseeable future. A brief description of the SWEIS alternatives follows.

Alternative 1: The No Action Alternative reflects the current nuclear weapons program missions at Y–12. Under the No Action Alternative, operations at Y–12 would continue to support the programs described in the SWEIS. The No Action Alternative includes certain construction projects that are underway or planned for the future. These projects include refurbishments or upgrades to plant systems, such as those for potable water, which have been analyzed in separate NEPA documentation.

Alternative 2: Under the UPF Alternative, NNSA would construct and operate a new UPF, (approximately 388,000 sq. ft.) which would consolidate enriched uranium operations into an integrated manufacturing facility;

Alternative 3: Under the Upgrade- in-Place Alternative, NNSA would upgrade existing facilities to contemporary environmental, safety, and security standards to the extent possible within the limitations of the existing structures and without prolonged interruptions of manufacturing operations.

Alternative 4: Under the Capability-sized UPF Alternative, NNSA would build a smaller UPF, (approximately 350,000 sq. ft.) compared to the UPF described under Alternative 2. A smaller UPF would maintain all capabilities, but would support a reduced production level.

Alternative 5: Under the No Net Production/Capability-sized UPF Alternative, NNSA would build a smaller UPF (approximately 350,000 sq. ft.) compared to the UPF described under Alternative 2. This smaller UPF would maintain all capabilities, but would support an even further reduced production level than Alternative 4.

A Complex Command Center (CCC), which would house equipment and personnel for the plant shift superintendent, Fire Department, and Emergency Operations Center, is also analyzed as a proposed action in all action alternatives (alternatives 2, 3, 4, and 5).

The Draft SWEIS was issued in October 2009 for public review and comment over a 90-day period. NNSA considered all comments received on the Draft SWEIS in preparing the Final SWEIS. The Final SWEIS includes: (1) A detailed wetlands assessment related to construction of a proposed Haul Road extension corridor that would affect wetlands; and (2) NNSA's responses to all comments received, including those received on the wetlands assessment.

Subsequent Document Preparation: NNSA will consider the environmental impact analysis presented in the Final Y–12 SWEIS, along with other information, in making decisions regarding the continued operation of Y–12. NNSA will not issue any RODs for at least 30 days following publication in the **Federal Register** of the Environmental Protection Agency's notice of availability. NNSA will publish all RODs in the **Federal Register.**

Signed in Washington, DC on February 25, 2011.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2011–4987 Filed 3–3–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—2021 Power Marketing Initiative Proposal

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed 2021 Power Marketing Initiative.

SUMMARY: Western Area Power Administration (Western), Upper Great Plains Region, a Federal power marketing agency of the Department of Energy (DOE) is seeking comments on this proposed 2021 Power Marketing Initiative (2021 PMI). Western's Firm Electric Service (FES) contracts associated with the current marketing plan will expire on December 31, 2020. This proposed 2021 PMI provides the basis for marketing the long-term firm hydroelectric resources of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) beyond the year 2020. The 2021 PMI proposes to extend the current marketing plan, with amendments, to key marketing plan principles. This **Federal Register** notice initiates Western's public process for the proposed 2021 PMI and requests public comments. Western will prepare and publish the final 2021 PMI in the **Federal Register** after all public comments on the proposed 2021 PMI are considered.

DATES: Entities interested in commenting on the proposed 2021 PMI must submit written comments to Western's Upper Great Plains Regional Office. Western must receive written comments by 4 p.m., MDT, on May 4, 2011. Western reserves the right to not consider any comments that are received after the prescribed date and time.

Western will hold public information forums (not to exceed 2 hours) and public comment forums (immediately following the information forums) on this proposed 2021 PMI.

The public information and public comment forum dates and times are:

1. April 13, 2011, 8:30 a.m., CDT, Lincoln, Nebraska.

2. April 14, 2011, 8:30 a.m., CDT, Sioux Falls, South Dakota.

3. April 20, 2011, 8:30 a.m., CDT, Bismarck, North Dakota.

ADDRESSES: Submit written comments regarding this proposed 2021 PMI to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266. Comments may also be faxed to (406) 255–2900 or e-mailed to *UGP2021@wapa.gov.*

The public information and comment forum locations are:

1. Lincoln—Holiday Inn, 141 North 9th Street, Lincoln, Nebraska.

2. Sioux Falls—Holiday Inn, 100 West 8th Street, Sioux Falls, South Dakota.

3. Bismarck—Best Western Ramkota Hotel, 800 South 3rd Street, Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: John A. Pankratz, Public Utilities Specialist, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 255–2932, e-mail *UGP2021@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Current Marketing Plan Background

The 1985 P–SMBP—ED Marketing Plan (1985 Plan) was published in the **Federal Register** (45 FR 71860, October 30, 1980) and provided the marketing plan principles used to market P–SMBP—ED firm hydropower resources. The FES contracts associated with the 1985 Plan were initially set to expire December 31, 2000. The Energy Planning and Management Program (EPAMP) final rule published in the **Federal Register** (60 FR 54151, October 20, 1995) Subpart C extended and amended the 1985 Plan. EPAMP extended the FES contracts associated with the 1985 Plan through December 31, 2020, and established the Post-2000, Post-2005, and the Post-2010 power marketing initiatives. The current Marketing Plan is inclusive of the 1985 Plan as extended and amended by EPAMP and the Post-2000, Post-2005, and Post-2010 power marketing initiatives.

2021 PMI Proposal Background

Western initiated 2021 PMI discussions with P–SMBP—ED firm power customers in November of 2010, by hosting meetings throughout the Upper Great Plains Region. In addition, Western hosted Native American-focused meetings throughout the Upper Great Plains Region to initiate government-to-government consultation with tribal firm power customers. The meetings provided customers the opportunity to review current Marketing Plan principles and provide informal input to Western for consideration in this 2021 PMI proposal. Key Marketing Plan principles discussed with firm power customers included: Contract Term; Resource Pools; Marketable Resource; Marketing Area; Load Factor Limit and Withdrawal Provisions; and Marketing Future Resources.

Western requested informal input from firm power customers for consideration in this 2021 PMI proposal. Customer input for the 2021 PMI supported Western extending the current Marketing Plan with amendments to the Contract Term and Resource Pools principles.

2021 PMI Proposal

Western's 2021 PMI proposes to extend the current Marketing Plan with amendments to the Contract Term and Resource Pools principles. The Marketing Plan principles that are proposed to be amended as well as the Marketing Plan principles that are proposed to be extended are as follows:

Amended Marketing Plan Principles:

1. Contract Term: A 30-year term contract term would be used for FES contracts. The FES contract term would begin January 1, 2021, and expire December 31, 2050.

2. Resource Pools: The 2021 PMI would provide for resource pools of up to 1 percent of the marketable resource under contract at the time for eligible new preference entities at the beginning of the contract term (January 1, 2021) and again every 10 years (January 1, 2031, and January 1, 2041).

Extended Marketing Plan Principles:

Extension of the current Marketing Plan includes all provisions and principles not specifically addressed in the preceding section (Amended Marketing Plan Principles). The following key principles were discussed with the firm power customers during the informal customer input phase of this process and are included below for reference purposes.

1. Marketable Resource: Based on adverse condition modeling to determine future marketable resource capability and median annual energy forecasting to determine future annual energy, the proposed 2021 PMI supports extending the existing contract rates of delivery commitments, with associated energy, to existing long-term firm power customers reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041.

2. Marketing Area: The marketing area of the P–SMBP—ED is Montana (east of the Continental Divide), all of North Dakota and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and then northwesterly to the northern boundary of the state at the 96½° meridian.

3. Load Factor Limit and Withdrawal Provisions:

a. Load Factor Limit: Western would market firm power at its customers' monthly system load factor for as long as possible. Western would reserve the right to limit monthly load factors to 70 percent if necessary during the 2021 PMI contract term. A 3-year notice would be given prior to requiring such limitation.

b. Project Use Withdrawal Provision: Western would reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project use requirements, by giving a minimum of 5 years' written notice in advance of such action.

c. Hydrology and River Operations Withdrawal Provision: Western, at its discretion and sole determination, would reserve the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments would only take place after a public process by Western.

4. Marketing Future Resources: Additional power resources may become available for various reasons. Any additional available resources would be used in accordance with EPAMP as specified in 10 CFR 905.32 (e).

Availability of Information

Documents developed or retained by Western in the 2021 PMI formal public process will be available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Western will post information about the 2021 PMI on its Web site at *http://www.wapa.gov/ugp/powermarketing/2021PMI.htm.* Written comments received as part of the 2021 PMI formal public process will be available for viewing on the Web site.

2021 PMI Procedures Requirements

Environmental Compliance

Western's 2021 PMI will comply with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347), the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and DOE NEPA implementing procedures (10 CFR 1021).

Dated: February 23, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–4605 Filed 3–3–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–OW–2011–0112; FRL–9275–5]

Lead-Based Paint Renovation, Repair and Painting Activities in Target Housing and Child Occupied Facilities; State of Kansas; Notice of Self-Certification Program Authorization, Request for Public Comment, Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that on April 19, 2010, the State of Kansas was deemed authorized under section 404(a) of the Toxic Substances Control Act (TSCA), 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 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 Kansas'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 Kansas 402(c)(3) program, which was deemed authorized by regulation and statute on April 19, 2010, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves the Kansas program application.

DATES: Comments, identified by docket control number EPA–R07–OW–2011–0112, must be received on or before April 18, 2011. In addition, a public hearing request must be submitted on or before March 21, 2011.

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–OW–2011–0112 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:

I. 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 Kansas. 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–OW–2011–0112. 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 Kansas 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 Kansas Department of Health and Environment, 1000 SW Jackson, Suite 330, Topeka, KS 66612–1365; contact person, Shannon Steinbauer, telephone number (866) 865–3233. 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–OW–2011–0112 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 April 19, 2010, the State of Kansas 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 April 19, 2010, Kansas 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 Kansas 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 Kansas 402(c)(3) program, which was deemed authorized by regulation and statute on April 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.

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 Kansas's self-certification application:

Program Summary

The State of Kansas has administered regulations concerning lead-based paint in housing since 2000. The U.S. Environmental Protection Agency (EPA) has authorized the Kansas Department of Health and Environment (KDHE) to operate a lead poisoning prevention program in Kansas to advance public health. The program at KDHE has provided for the oversight and accreditation of firms and individuals who provide specific lead-based paint activity training. KDHE has also provided for the licensing and oversight of firms who engage in specialized activities such as lead-based paint abatement, and environmental inspections and risk assessments that identify lead-based paint in housing and other properties such as schools and daycare centers. KDHE certifies and oversees individuals who are trained and then seek to perform lead-based activities within the state. KDHE also operates a program that oversees the contractors in the state, who for compensation, engage in activities that could disturb painted surfaces on homes constructed prior to 1978 (target housing). The program known as the Pre Renovation Education (PRE) program requires that homeowners and occupants of target properties be properly notified about the dangers associated with the work that could affect the occupants and provide educational materials that are designed to help protect their health. Kansas is one of only two states nationally that has operated a PRE program under EPA authorization.

Today EPA, Kansas, and KDHE are expanding authorizations to include the newly promulgated Renovation, Repair, and Painting (RRP) rule. RRP enhances PRE and requires that contracting firms who perform work for compensation in target housing be licensed and that individuals who perform work which disturbs lead-based paint are properly trained in work practices that protect human health public safety. Records of the use of proper work practices, work training, and owner/occupant disclosure must be maintained as part of the RRP

program in Kansas. KDHE will oversee the firm licensing, worker training, work practice adherence and record retention. KDHE modernized and enhanced the operational capacity of the Healthy Homes and Lead Hazard Prevention (HHLHP) program in order to assist the regulated entities and individuals in Kansas achieve compliance with the RRP regulations. HHLHP will also perform extensive compliance assistance and educational outreach to homeowners, tenants, landlords and other individuals who request it in order to advance the success of the lead poisoning prevention efforts in the state. KDHE has enhanced the PRE rule in Kansas to require retailers who sell paint removal and contractor supplies to post educational signage in plain view near the painting supplies that explain the hazards of lead-based paint and where to receive more information about health protection. The poster also reminds contractors of their duty to comply with the PRE and RRP regulations. KDHE will advance the program through compliance training, oversight, and enforcement activities that can include financial penalties of $5,000 or more under Kansas law.

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 record keeping requirements, State of Kansas.

Dated: February 22, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–4975 Filed 3–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8995–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly Receipt of Environmental Impact Statements Filed 02/21/2011 Through 02/25/2011

Pursuant to 40 CFR 1506.9

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html*. Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110055, Second Draft Supplement, USACE, CA, Sacramento River Deep Water Ship Channel Project, Proposal to Re-initiate Deepening and Selective Widening, Yolo, Sacramento, Solano and Contra Costa Counties, CA, Comment Period Ends: 04/18/2011, Contact: Dr. William Brostoff 415–503–6867.

EIS No. 20110056, Final EIS, NRC, TX, South Texas Project, Electric Generating Station Units 3 and 4, Application for Combined Licenses (COLs) for Construction Permits and Operating Licenses, Matagorda County, TX, Review Period Ends: 04/04/2011, Contact: Jessie M. Muir 301–415–0491.

EIS No. 20110057, Draft EIS, USACE, FL, Everglades Restoration Transition Plan (ERTP), To Defined Water Management Operating Criteria for Central and Southern Florida Project (C&SF) features and the Constructed features of the Modified Water Deliveries and Canal-III Project until a Combined Operational Plan is Implemented, Broward and Miami-Dade Counties, FL, Comment Period Ends: 04/18/2011, Contact: Gina Paduano Ralph 904–232–2336.

EIS No. 20110058, Final EIS, USFS, UT, Uinta National Forest Oil and Gas Leasing, Implementation, Identify National Forest Systems Lands with Federal Mineral Rights, Wasatch, Utah, Juab, Tooele, and Sanpete Counties, UT, Review Period Ends: 04/04/2011, Contact: Kim Martin 801–342–5100.

EIS No. 20110059, Final EIS, USACE, 00, Sabine-Neches Waterway Channel Improvement Project, Proposed Ocean Dredged Material Disposal Site Designation, Southeast Texas and Southwest Louisiana, Review Period Ends: 04/04/2011, Contact: Janelle Stokes 409–766–3039.

EIS No. 20110060, Draft EIS, DOE, WV, Mountaineer Commercial Scale Carbon Capture and Storage Project, Construction and Operation, New Haven, Mason County, WV, Comment Period Ends: 04/18/2011, Contact: Mark W. Lusk 304–285–4145.

EIS No. 20110061, Final EIS, USFS, MN, Tracks Project, Proposing Forest Vegetation Management and Related Transportation System Activities, Superior National Forest, Laurentian Ranger District, St. Louis and Lake Counties, MN, Review Period Ends: 04/04/2011, Contact: Sudan Duffy 218–365–2097.

EIS No. 20110062, Draft EIS, USACE, LA, New Orleans To Venice (NOV), Louisiana, Hurricane Rick Reduction Project, Incorporation of Non-Federal Levees from Oakville to St. Jude, Plaquemines Parish, LA, Comment Period Ends: 04/18/2011, Contact: Christopher Koeppel 601–631–5410.

EIS No. 20110063, Draft EIS, USFS, CA, Mudflow Vegetation Management Project, To Improve or Sustain the Health and Resiliency of the Forest and Reduce the Risk of Stand-replacing Wildfire, Siskiyou County, CA, Comment Period Ends: 04/18/2011, Contact: J. Sharon Heywood 530–226–2520.

EIS No. 20110064, Final EIS, FERC, CA, McCloud-Pit Hydroelectric Project, (Project No. 2106) Application to Relicense its 368–Megawatt (MW), McCloud and Pit Rivers, Shasta County, CA, Review Period Ends: 04/04/2011, Contact: Mary O'Driscoll 1–866–208–3372.

EIS No. 20110065, Draft EIS, FHWA, TN, North Second Street Corridor Improvement Project, from Interstate

40 at North Second Street to the Intersection of U.S. 51/SR–32 Whitney Avenue in Memphis, Shelby County, TN, Comment Period Ends: 04/18/2011, Contact: Charles J. O'Neill 615–781–5770.

EIS No. 20110066, Final EIS, NNSA, TN, Y–12 National Security Complex Project, to Support the Stockpile Stewardship Program and to Meet the Mission Assigned to Y–12, Oak Ridge, TN, Review Period Ends: 04/04/2011, Contact: Pam Gorman 865–576–9903.

Amended Notices

EIS No. 20110008, Draft EIS, BIA, CA, Big Sandy Rancheria and Casino and Resort Project, Proposing Construct a Gaming and Entertainment Facility, Approval of Lease Agreement Grant, Big Sandy Rancheria Band of Western Mono Indians, East of Friant, Fresno County, CA, Comment Period Ends: 04/12/2011, Contact: Marvin Keller 703–390–6470.

Revision to FR Notice Published 01/14/2011: Extending Comment Period from 03/28/2011 to 04/12/2011.

EIS No. 20110021, Final EIS, NPS, 00, Long Walk National Historic Trail Feasibility Study, To Evaluate the Suitability and Feasibility of Designating the Routes, Implementation, Apache, Coconino, Navajo Counties, AZ; Bernalillo, Cibola, De Baca, Guadalupe, Lincoln, McKinley, Mora, Otero, Santa Fe, Sandolval, Torrance, Valencia Counties, NM, Review Period Ends: 04/04/2011, Contact: Sharon Brown 505–988–6717.

Revision to FR Notice Published 01/28/2011: CEQ Review Period Ending 02/28/2011 has been Reestablished to 04/04/2011. Due to Incomplete Distribution of the FEIS at the time of Filing with USEPA under section 1506.9 of the CEQ Regulations.

EIS No. 20110052, Draft EIS, USFS, 00, PROGRAMMATIC—National Forest System Land Management Planning, Proposing a New Rule at 36 CFR Part 219 Guide Development, Revision, and Amendment of Land Management Plans for Unit of the National Forest System, Comment Period Ends: 05/16/2011, Contact: Brenda Halter-Glenn 202–260–9400.

Revision to FR Notice Published 02/25/2011: Correction to Comment Period from 05/25/2011 to 05/16/2011.

EIS No. 20110053, Final EIS, USACE, 00, PROGRAMMATIC—Ohio River Mainstem System Study, System Investment Plan (SIP) for Maintaining Safe, Environmentally Sustainable and Reliable Navigation on the Ohio River, IL, IN, OH, KY, PA and WV, Review Period Ends: 04/12/2011, Contact: Dr. Hank Jarboe 513–684–6050.

Revision FR Notice Published 02/25/2011: Extending Review Period from 03/28/2011 to 04/12/2011.

Dated: March 1, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–4887 Filed 3–3–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2011–N–04]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2010 second round review cycle under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before April 18, 2011.

ADDRESSES: Bank members selected for the 2010 second round review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at *hmgcommunitysupportprogram@fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Rona Richardson, Office Assistant, Housing Mission and Goals, Federal Housing Finance Agency, by telephone at 202–408–2945, by electronic mail at *Rona.Richardson@FHFA.gov,* or by hard-copy mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 1290.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to FHFA by the April 18, 2011 deadline prescribed in this notice. 12 CFR 1290.2(b)(1)(ii) and (c). On or before March 18, 2011, each Bank will notify the members in its district that have been selected for the 2010 first round community support review cycle that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR 1290.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on the FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf.* Upon request, the member's Bank also will provide

assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2010 second round community support review cycle:

Federal Home Loan Bank of Boston—District 1

Essex Savings Bank	Essex	Connecticut.
Collinsville Savings Society	Collinsville	Connecticut.
Guilford Savings Bank	Guilford	Connecticut.
Milford National Bank and Trust Co	Milford	Massachusetts.
Equitable Co-operative Bank	Lynn	Massachusetts.
Peoples Federal Savings Bank	Brighton	Massachusetts.
North Middlesex Savings Bank	Ayer	Massachusetts.
Southbridge Savings Bank	Southbridge	Massachusetts.
Florence Savings Bank	Florence	Massachusetts.
Bristol County Savings Bank	Taunton	Massachusetts.
Dedham Institution for Savings	Dedham	Massachusetts.
Hyde Park Savings Bank	Hyde Park	Massachusetts.
Millbury Savings Bank	Millbury	Massachusetts.
Scituate Federal Savings Bank	Scituate	Massachusetts.
Athol Savings Bank	Athol	Massachusetts.
East Cambridge Savings Bank	Cambridge	Massachusetts.
Mansfield Co-operative Bank	Mansfield	Massachusetts.
S-Bank	Weymouth	Massachusetts.
OneUnited Bank	Boston	Massachusetts.
Citizens-Union Savings Bank	Fall River	Massachusetts.
Marblehead Bank	Marblehead	Massachusetts.
Family Federal Savings, FA	Fitchburg	Massachusetts.
First Federal Savings Bank of Boston	Boston	Massachusetts.
Hometown Bank, A Co-operative Bank	Webster	Massachusetts.
Monson Savings Bank	Monson	Massachusetts.
The Bank of Canton	Canton	Massachusetts.
Hampden Bank	Springfield	Massachusetts.
Katahdin Trust Company	Patten	Maine.
Franklin Savings Bank	Farmington	Maine.
Damariscotta Bank and Trust Company	Damariscotta	Maine.
Skowhegan Savings Bank	Skowhegan	Maine.
Union Bank	Morrisville	Vermont.
Randolph National Bank	Randolph	Vermont.

Federal Home Loan Bank of New York—District 2

Bogota Savings Bank	Teaneck	New Jersey.
Investors Savings Bank	Short Hills	New Jersey.
Morgan Stanley Trust	Jersey City	New Jersey.
Spencer Savings Bank, SLA	Elmwood Park	New Jersey.
Millington Savings Bank	Millington	New Jersey.
Schuyler Savings Bank	Kearny	New Jersey.
Metuchen Savings Bank	Metuchen	New Jersey.
Boiling Springs Savings Bank	Rutherford	New Jersey.
Freehold Savings & Loan Association	Freehold	New Jersey.
NVE Bank	Englewood	New Jersey.
Lincoln Park Savings Bank	Lincoln Park	New Jersey.
Sturdy Savings Bank	Cape May Court House	New Jersey.
Ocean City Home Bank	Ocean City	New Jersey.
The Bank	Woodbury	New Jersey.
Colonial Bank, FSB	Vineland	New Jersey.
Carver Federal Savings Bank	New York	New York.
Brooklyn Federal Savings Bank	Brooklyn	New York.
Chinatown Federal Savings Bank	New York	New York.
Elmira Savings Bank, FSB	Elmira	New York.
Maspeth Federal Savings and Loan Association	Maspeth	New York.
Country Bank	New York	New York.
Abacus Federal Savings Bank	New York	New York.
PathFinder Bank	Oswego	New York.
The Upstate National Bank	Rochester	New York.
Doral Bank	San Juan	Puerto Rico.

Federal Home Loan Bank of Pittsburgh—District 3

Artisans' Bank	Wilmington	Delaware.
Armstrong County Building & Loan Association	Ford City	Pennsylvania.
Coatesville Savings Bank	Coatesville	Pennsylvania.
Parkvale Savings Bank	Monroeville	Pennsylvania.
Westmoreland Federal Savings & Loan Association	Latrobe	Pennsylvania.
Peoples Neighborhood Bank	Hallstead	Pennsylvania.

Greenville Savings Bank	Greenville	Pennsylvania.
Union Bank and Trust Company	Pottsville	Pennsylvania.
ESSA Bank & Trust	Stroudsburg	Pennsylvania.
First Columbia Bank & Trust Company	Bloomsburg	Pennsylvania.
Altoona First Savings Bank	Altoona	Pennsylvania.
Investment Savings Bank	Altoona	Pennsylvania.
Citizens & Northern Bank	Wellsboro	Pennsylvania.
FirsTrust Bank	Carmichaels	Pennsylvania.
First National Community Bank	Johnstown	Pennsylvania.
Mifflinburg Bank & Trust Company	Charleroi	Pennsylvania.
The Honesdale National Bank	Lewistown	Pennsylvania.
FirsTrust Bank	Conshohocken	Pennsylvania.
First National Community Bank	Dunmore	Pennsylvania.
Mifflinburg Bank & Trust Company	Mifflinburg	Pennsylvania.
The Honesdale National Bank	Wilkes-Barre	Pennsylvania.
Sewickley Savings Bank	Sewickley	Pennsylvania.
The Muncy Bank and Trust Company	Muncy	Pennsylvania.
First Federal Savings Bank	Sistersville	West Virginia.
Huntington Federal Savings Bank	Huntington	West Virginia.
First National Bank	Ronceverte	West Virginia.
Doolin Security Savings Bank, FSB	New Martinsville	West Virginia.
Citizens Bank of Morgantown	Morgantown	West Virginia.
First Federal Savings & Loan Association of Ravenswood	Ravenswood	West Virginia.
Williamstown Bank, Inc	Williamstown	West Virginia.
Calhoun County Bank, Inc	Grantsville	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Phenix-Girard Bank	Phenix City	Alabama.
Citizens Bank, Inc	Robertsdale	Alabama.
The Headland National Bank	Headland	Alabama.
The Southern Bank Company	Gadsden	Alabama.
First Tuskegee Bank	Montgomery	Alabama.
Robertson Banking Company	Demopolis	Alabama.
The Bank of Vernon	Vernon	Alabama.
The Citizens Bank	Greensboro	Alabama.
Community Bank of Manatee	Bradenton	Florida.
Capital City Bank	Tallahassee	Florida.
Charlotte State Bank	Port Charlotte	Florida.
Progress Bank of Florida	Tampa	Florida.
BankAtlantic	Fort Lauderdale	Florida.
BankUnited, FSB	Miami Lakes	Florida.
Eagle National Bank of Miami	Miami	Florida.
Federal Trust Bank	Sanford	Florida.
International Finance Bank	Miami	Florida.
Bank of Belle Glade	Belle Glade	Florida.
Bay Bank and Trust	Panama City	Florida.
First Federal Savings and Loan of Valdosta	Valdosta	Georgia.
Greater Rome Bank	Rome	Georgia.
Elberton Federal Savings & Loan Association	Elberton	Georgia.
Appalachian Community Bank	Ellijay	Georgia.
Pineland State Bank	Metter	Georgia.
The Coastal Bank	Savannah	Georgia.
First National Bank of Coffee County	Douglas	Georgia.
Georgia Bank and Trust Company of Augusta	Augusta	Georgia.
Homewood Federal Savings Bank	Baltimore	Maryland.
Baltimore County Savings Bank, FSB	Baltimore	Maryland.
Madison Bohemian Savings Bank	Forest Hills	Maryland.
Fraternity Federal Savings & Loan Association	Baltimore	Maryland.
Jarrettsville Federal S&L Association	Jarrettsville	Maryland.
American Bank	Silver Spring	Maryland.
AmericasBank	Towson	Maryland.
Hamilton Federal Bank	Baltimore	Maryland.
Maryland Bank and Trust Company, N.A	Waldorf	Maryland.
Colombo Bank	Rockville	Maryland.
Advance Bank	Baltimore	Maryland.
The Talbot Bank of Easton	Easton	Maryland.
Sykesville Federal Savings Association	Sykesville	Maryland.
First Bank	Troy	North Carolina.
The Citizens Bank	Olanta	South Carolina.
The Peoples Bank	Iva	South Carolina.
The Palmetto Bank	Laurens	South Carolina.
Woodruff Federal Savings & Loan Association	Woodruff	South Carolina.
Spratt Savings and Loan Association	Chester	South Carolina.
First Palmetto Savings Bank, FSB	Camden	South Carolina.
Plantation Federal Bank	Pawleys Island	South Carolina.

Virginia Commerce Bank	Arlington	Virginia.
EVB	Glenns	Virginia.
Shore Bank	Onley	Virginia.
First and Citizens Bank	Monterey	Virginia.
Powell Valley National Bank	Jonesville	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

First Community Bank of Western Kentucky, Inc	Clinton	Kentucky.
United Citizens Bank & Trust Company	Campbellsburg	Kentucky.
Clinton Bank	Clinton	Kentucky.
Peoples Bank of Mt. Washington	Mt. Washington	Kentucky.
First Federal Savings & Loan Association	Hazard	Kentucky.
Farmers and Traders Bank of Campton	Campton	Kentucky.
The First Capital Bank of Kentucky	Louisville	Kentucky.
United Kentucky Bank of Pendleton County, Inc	Falmouth	Kentucky.
Citizens Federal Savings and Loan Association of Covington	Covington	Kentucky.
South Central Bank, FSB	Elizabethton	Kentucky.
Bank of the Bluegrass & Trust Company	Lexington	Kentucky.
Fredonia Valley Bank	Fredonia	Kentucky.
First Southern National Bank	Stanford	Kentucky.
Peoples Security Bank	Louisa	Kentucky.
Farmers Bank & Trust Company, Inc	Princeton	Kentucky.
Republic Bank	Louisville	Kentucky.
Van Wert Federal Savings Bank	Van Wert	Ohio.
Fidelity Federal Savings and Loan Association of Delaware	Delaware	Ohio.
The Mechanics Savings Bank	Mansfield	Ohio.
First FS&LA of Newark	Newark	Ohio.
The Waterford Commercial and Savings Bank	Waterford	Ohio.
The Nelsonville Home and Savings Association	Nelsonville	Ohio.
Peoples Federal Savings and Loan Association of Sidney	Sidney	Ohio.
The Savings Bank	Circleville	Ohio.
Liberty National Bank	Ada	Ohio.
Peoples Bank, National Association	Marietta	Ohio.
Commodore Bank	Somerset	Ohio.
Kingston National Bank	Kingston	Ohio.
The Cortland Savings and Banking Company	Cortland	Ohio.
First Federal Community Bank of Bucyrus	Bucyrus	Ohio.
First Federal Savings & Loan Association of Lakewood	Lakewood	Ohio.
Perpetual Federal Savings Bank	Urbana	Ohio.
New Carlisle Federal Savings Bank	New Carlisle	Ohio.
Liberty Savings Bank, FSB	Wilmington	Ohio.
Third Federal Savings & Loan Association of Cleveland	Cleveland	Ohio.
The Peoples Bank Company	Coldwater	Ohio.
Heartland Bank	Gahanna	Ohio.
The Valley Central Savings Bank	Reading	Ohio.
The Middlefield Banking Company	Middlefield	Ohio.
Merchants National Bank	Hillsboro	Ohio.
Somerville National Bank	Somerville	Ohio.
United Midwest Savings Bank	DeGraff	Ohio.
First City Bank	Columbus	Ohio.
First Federal Community Bank	Dover	Ohio.
First Safety Bank	Cincinnati	Ohio.
Citizens Community Bank	Winchester	Tennessee.
Volunteer Federal Savings & Loan Association of Madisonville	Madisonville	Tennessee.
Jefferson Federal Bank	Morristown	Tennessee.
Progressive Savings Bank, FSB	Jamestown	Tennessee.
First National Bank of Tennessee	Livingston	Tennessee.
Trust One Bank	Memphis	Tennessee.
Bank of Crockett	Bells	Tennessee.
Farmers & Merchants Bank	Adamsville	Tennessee.
Decatur County Bank	Decaturville	Tennessee.
Newport Federal Bank	Newport	Tennessee.
Wilson Bank and Trust	Lebanon	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Lake Federal Bank, FSB	Hammond	Indianapolis.
Boonville Federal Savings Bank	Boonville	Indianapolis.
First Federal Savings Bank—Angola	Angola	Indianapolis.
Riddell National Bank	Brazil	Indianapolis.
Union Savings & Loan Association	Connersville	Indianapolis.
Newton County Loan & Savings Association, FSB	Goodland	Indianapolis.
Community Bank	Noblesville	Indianapolis.
Crossroads Bank	Wabash	Indianapolis.
Farmers Bank	Frankfort	Indianapolis.

First Bank Richmond, N.A	Richmond	Indianapolis.
First Federal Savings & Loan of Greensburg	Greensburg	Indianapolis.
First Federal Savings Bank	Washington	Indianapolis.
Grant County State Bank	Swayzee	Indianapolis.
Kentland Federal Savings and Loan Association	Kentland	Indianapolis.
Liberty Savings Bank, FSB	Whiting	Indianapolis.
Logansport Savings Bank, FSB	Logansport	Indianapolis.
The First National Bank of Odon	Odon	Indianapolis.
Pacesetter Bank	Hartford City	Indianapolis.
Scottsburg Building & Loan Association	Scottsburg	Indianapolis.
Select Bank	Grand Rapids	Michigan.
First National Bank of Wakefield	Wakefield	Michigan.
Edgewater Bank	St. Joseph	Michigan.
Bay Port State Bank	Bay Port	Michigan.
New Buffalo Savings Bank, FSB	New Buffalo	Michigan.
Monarch Community Bank	Coldwater	Michigan.
Peoples State Bank of Munising	Munising	Michigan.
Union Bank	Lake Odessa	Michigan.
Huron Community Bank	East Tawas	Michigan.
Central Savings Bank	Sault Ste. Marie	Michigan.

Federal Home Loan Bank of Chicago—District 7

American Enterprise Bank	Buffalo Grove	Illinois.
CIBM	Champaign	Illinois.
City National Bank of Metropolis	Metropolis	Illinois.
Community Savings Bank	Chicago	Illinois.
Cornerstone Bank & Trust, N.A	Carrollton	Illinois.
First National Bank of Grant Park	Grant Park	Illinois.
First Robinson Savings Bank, N.A	Robinson	Illinois.
Flora Bank & Trust	Flora	Illinois.
Home Federal Savings & Loan Association of Collinsville	Collinsville	Illinois.
Illinois-Service Federal Savings & Loan Association	Chicago	Illinois.
Liberty Bank for Savings	Chicago	Illinois.
McHenry Savings Bank	McHenry	Illinois.
Nashville Savings Bank	Nashville	Illinois.
Pulaski Savings Bank	Chicago	Illinois.
The Farmers Bank of Mount Pulaski	Mt. Pulaski	Illinois.
The First National Bank	Vandalia	Illinois.
Town & Country Bank	Springfield	Illinois.
Brown County State Bank	Mount Sterling	Illinois.
Collinsville Building and Loan Association	Collinsville	Illinois.
GreenChoice Bank	Chicago	Illinois.
First Bank of Manhattan	Manhattan	Illinois.
First Federal Savings & Loan Association of Central Illinois	Shelbyville	Illinois.
Forreston State Bank	Forreston	Illinois.
Guardian Savings Bank	Granite City	Illinois.
Heritage State Bank	Lawrenceville	Illinois.
Lisle Savings Bank	Lisle	Illinois.
Milford Building & Loan Association	Milford	Illinois.
The First National Bank in Carlyle	Carlyle	Illinois.
Wabash Savings Bank	Mount Carmel	Illinois.
West Town Savings Bank	Cicero	Illinois.
First State Bank of Beecher City	Beecher City	Illinois.
First Chicago Bank & Trust	Chicago	Illinois.
South Central Bank, National Association	Chicago	Illinois.
Bank of Brodhead	Brodhead	Wisconsin.
Bank of Lake Mills	Lake Mills	Wisconsin.
Banner Banks	Birnamwood	Wisconsin.
BLC Community Bank	Little Chute	Wisconsin.
Community Business Bank	Sauk City	Wisconsin.
Farmers & Merchants Bank	Tomah	Wisconsin.
First Bank	Tomah	Wisconsin.
First Community Bank	Milton	Wisconsin.
Greenleaf Wayside Bank	Greenleaf	Wisconsin.
Heritage Bank	Spencer	Wisconsin.
Hustisford State Bank	Hustisford	Wisconsin.
ISB Community Bank	Ixonia	Wisconsin.
Mid America Bank	Janesville	Wisconsin.
Milton Savings Bank	Milton	Wisconsin.
North Shore Bank, FSB	Brookfield	Wisconsin.
Paper City Savings Association	Wisconsin Rapids	Wisconsin.
Rural American Bank—Luck	Luck	Wisconsin.
Superior Savings Bank	Superior	Wisconsin.
Union State Bank	Kewaunee	Wisconsin.
West Pointe Bank	Oshkosh	Wisconsin.

Dairy State Bank	Rice Lake	Wisconsin.
National Exchange Bank & Trust	Fond du Lac	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

Citizens State Bank	Fort Dodge	Iowa.
Clarke County State Bank	Osceola	Iowa.
First Federal Savings Bank of Creston, FSB	Creston	Iowa.
Iowa Trust and Savings Bank	Centerville	Iowa.
American State Bank	Sioux Center	Iowa.
Boone Bank & Trust Company	Boone	Iowa.
City State Bank	Norwalk	Iowa.
Peoples State Bank	Albia	Iowa.
West Liberty State Bank	West Liberty	Iowa.
First Community Bank	Keokuk	Iowa.
Iowa State Savings Bank	Knoxville	Iowa.
Sibley State Bank	Sibley	Iowa.
New Albin Savings Bank	New Albin	Iowa.
Cedar Valley Bank & Trust	La Porte City	Iowa.
Dubuque Bank & Trust Company	Dubuque	Iowa.
Principal Bank	Des Moines	Iowa.
Lincoln Savings Bank	Cedar Falls	Iowa.
United Community Bank	Milford	Iowa.
Citizens Savings Bank	Anamosa	Iowa.
Heritage Bank	Marion	Iowa.
Iowa Prairie Bank	Brunsville	Iowa.
Keokuk Savings Bank & Trust Company	Keokuk	Iowa.
The First National Bank of Le Center	Le Center	Minnesota.
Prior Lake State Bank	Prior Lake	Minnesota.
First State Bank Minnesota	Le Roy	Minnesota.
Citizens Independent Bank	St. Louis Park	Minnesota.
Farmers and Merchants State Bank of Blooming Prairie	Blooming Prairie	Minnesota.
The First National Bank of Osakis	Osakis	Minnesota.
State Bank in Eden Valley	Eden Valley	Minnesota.
Bank Midwest	Fairmont	Minnesota.
Bremer Bank, N.A	Alexandria	Minnesota.
First National Bank of Menahga and Sebeka	Menahga	Minnesota.
First Minnesota Bank	Minnetonka	Minnesota.
First Bank Blue Earth	Blue Earth	Minnesota.
Home Savings of America	Little Falls	Minnesota.
Minnwest Bank South	Tracy	Minnesota.
Star Bank	Bertha	Minnesota.
State Bank of Kimball	Kimball	Minnesota.
1st Cameron State Bank	Cameron	Missouri.
Security Bank of the Ozarks	Eminence	Missouri.
Southwest Missouri Bank	Carthage	Missouri.
Bank 21	Carrollton	Missouri.
Community State Bank	Shelbina	Missouri.
Rockwood Bank	Eureka	Missouri.
Bank of Urbana	Urbana	Missouri.
Clay County Savings Bank	Liberty	Missouri.
Bremen Bank and Trust Company	St. Louis	Missouri.
First Home Savings Bank	Mountain Grove	Missouri.
First National Bank	Camdenton	Missouri.
KCB Bank	Kearney	Missouri.
Missouri Bank & Trust Company	Kansas City	Missouri.
Southern Commercial Bank	St. Louis	Missouri.
Belgrade State Bank	Belgrade	Missouri.
Boulevard Bank	Neosho	Missouri.
Community Bank, N.A	Summersville	Missouri.
First Bank	Creve Coeur	Missouri.
O'Bannon Banking Company	Buffalo	Missouri.
Peoples Bank & Trust Company	Troy	Missouri.
Progressive Ozark Bank, FSB	Salem	Missouri.
The Missouri Bank	Warrenton	Missouri.
BankLiberty	Liberty	Missouri.
First State Bank of North Dakota	Arthur	North Dakota.
Liberty State Bank	Powers Lake	North Dakota.
Farmers and Merchants State Bank	Plankinton	South Dakota.
Campbell County Bank, Inc	Herreid	South Dakota.
CorTrust Bank, National Association	Mitchell	South Dakota.
First Premier Bank	Sioux Falls	South Dakota.
Dacotah Bank	Aberdeen	South Dakota.
Dakota Heritage State Bank	Chancellor	South Dakota.
Reliabank Dakota	Estelline	South Dakota.
Commercial State Bank	Wagner	South Dakota.

Bank 360	Beresford	South Dakota.
First Savings Bank	Beresford	South Dakota.
First Western Federal Savings Bank	Rapid City	South Dakota.
Plains Commerce Bank	Hoven	South Dakota.
First Bank & Trust	Brookings	South Dakota.

Federal Home Loan Bank of Dallas—District 9

Farmers & Merchants Bank	Stuttgart	Arkansas.
Union Bank and Trust Company	Monticello	Arkansas.
Community First Bank	Harrison	Arkansas.
First Arkansas Bank & Trust	Jacksonville	Arkansas.
Heartland Community Bank	Bryant	Arkansas.
Arkansas Bankers' Bank	Little Rock	Arkansas.
Bank of New Orleans	Metairie	Louisiana.
Bank of Zachary	Zachary	Louisiana.
Citizens Bank & Trust Company	Plaquemine	Louisiana.
Community Trust Bank	Choudrant	Louisiana.
Fifth District Savings Bank	New Orleans	Louisiana.
First Financial Bank & Trust Company	Plaquemine	Louisiana.
First National Bank USA	Boutte	Louisiana.
Plaquemine Bank & Trust Company	Plaquemine	Louisiana.
The Union Bank	Marksville	Louisiana.
Abbeville Building & Loan, a State Chartered Savings Bank	Abbeville	Louisiana.
Central Progressive Bank	Lacombe	Louisiana.
Crescent Bank & Trust	New Orleans	Louisiana.
First Federal Bank of Louisiana	Lake Charles	Louisiana.
Iberia Bank	Lafayette	Louisiana.
MBL Bank	Minden	Louisiana.
United Community Bank	Gonzales	Louisiana.
Rayne Building and Loan Association	Rayne	Louisiana.
Magnolia State Bank	Bay Springs	Mississippi.
State Bank & Trust Company	Brookhaven	Mississippi.
Bank of Okalona	Okolona	Mississippi.
First National Bank of Pontotoc	Pontotoc	Mississippi.
Grand Bank for Savings, FSB	Hattiesburg	Mississippi.
OmniBank	Jackson	Mississippi.
The First, A National Banking Association	Hattiesburg	Mississippi.
Trustmark National Bank	Jackson	Mississippi.
Bank 34	Alamogordo	New Mexico.
The Bank of Las Vegas	Las Vegas	New Mexico.
The First National Bank of New Mexico	Clayton	New Mexico.
Citizens Bank of Las Cruces	Las Cruces	New Mexico.
Union Savings Bank	Albuquerque	New Mexico.
American National Bank of Texas	Terrell	Texas.
Citizens State Bank	Sealy	Texas.
First Federal Community Bank	Paris	Texas.
First State Bank Central Texas	Temple	Texas.
Shelby Savings Bank, SSB	Center	Texas.
Amplify Federal Credit Union	Austin	Texas.
Chappell Hill Bank	Chappell Hill	Texas.
Charter Bank	Corpus Christi	Texas.
Citizens National Bank	Crockett	Texas.
Falcon International Bank	Laredo	Texas.
First Bank of Conroe, N.A	Conroe	Texas.
First National Bank in Dalhart	Dalhart	Texas.
First State Bank	Louise	Texas.
Hill Bank & Trust Company	Weimar	Texas.
Justin State Bank	Justin	Texas.
Peoples Bank	Paris	Texas.
Preston National Bank	Dallas	Texas.
Robert Lee State Bank	Robert Lee	Texas.
Spring Hill State Bank	Longview	Texas.
The Brenham National Bank	Brenham	Texas.
Wood County National Bank	Quitman	Texas.
Gladewater National Bank	Gladewater	Texas.
The First National Bank of Chillicothe	Chillicothe	Texas.
First State Bank	Stratford	Texas.
Meridian Bank Texas	Fort Worth	Texas.
Citizens 1st Bank	Tyler	Texas.

Federal Home Loan Bank of Topeka—District 10

Rio Grande Savings and Loan Association	Monte Vista	Colorado.
High Plains Bank	Flagler	Colorado.
Morgan Federal Bank	Fort Morgan	Colorado.

Colorado Capital Bank	Castle Rock	Colorado.
Rocky Mountain Bank and Trust	Colorado Springs	Colorado.
Collegiate Peaks Bank	Buena Vista	Colorado.
Century Savings & Loan Association	Trinidad	Colorado.
Farmers State Bank of Calhan	Calhan	Colorado.
First National Bank of Durango	Durango	Colorado.
Castle Rock Bank	Castle Rock	Colorado.
Colorado Federal Savings Bank	Greenwood Village	Colorado.
Community Banks of Colorado	Greenwood Village	Colorado.
Park State Bank & Trust	Woodland Park	Colorado.
San Luis Valley Federal Bank	Alamosa	Colorado.
Valley Bank & Trust Company	Brighton	Colorado.
First Bank Kansas	Salina	Kansas.
Peoples Exchange Bank	Belleville	Kansas.
Argentine Federal Savings	Kansas City	Kansas.
Peabody State Bank	Peabody	Kansas.
Garden Plain State Bank	Wichita	Kansas.
Citizens Bank, N.A	Fort Scott	Kansas.
Girard National Bank	Girard	Kansas.
Stockton National Bank	Stockton	Kansas.
The Roxbury Bank	Roxbury	Kansas.
Bank of Blue Valley	Overland Park	Kansas.
Central National Bank	Junction City	Kansas.
Citizens Bank of Kansas, N.A	Kingman	Kansas.
First Federal Savings & Loan Association of Olathe	Olathe	Kansas.
Golden Belt Bank, FSA	Hays	Kansas.
Kanza Bank	Kingman	Kansas.
Midland National Bank	Newton	Kansas.
The Citizens State Bank	Moundridge	Kansas.
The Peoples Bank	Pratt	Kansas.
The Elk State Bank	Clyde	Kansas.
Horizon Bank	Waverly	Nebraska.
Security National Bank of Omaha	Omaha	Nebraska.
Pinnacle Bank	Gretna	Nebraska.
The Nehawka Bank	Nehawka	Nebraska.
Security Home Bank	Malmo	Nebraska.
Farmers & Merchants National Bank	Ashland	Nebraska.
Platte Valley National Bank	Scottsbluff	Nebraska.
Bank of the Panhandle	Guymon	Oklahoma.
First National Bank in Marlow	Marlow	Oklahoma.
First State Bank of Porter	Locust Grove	Oklahoma.
First American Bank	Norman	Oklahoma.
Bank of the Lakes, N.A	Owasso	Oklahoma.
BancFirst	Oklahoma City	Oklahoma.
Citizens Security Bank & Trust Company	Bixby	Oklahoma.
McCurtain County National Bank	Idabel	Oklahoma.
The Farmers State Bank	Quinton	Oklahoma.
First National Bank & Trust Company	Shawnee	Oklahoma.
First National Bank & Trust Company of Ardmore	Ardmore	Oklahoma.
First Texoma National Bank	Durant	Oklahoma.
Oklahoma Bank & Trust Company	Clinton	Oklahoma.
The First National Bank of Vinita	Vinita	Oklahoma.
Valley National Bank	Tulsa	Oklahoma.
Platte Valley Bank	Torrington	Wyoming.

Federal Home Loan Bank of San Francisco—District 11

Bank 1440	Phoenix	Arizona.
Palm Desert National Bank	Palm Desert	California.
El Dorado Savings Bank	Placerville	California.
Preferred Bank	Los Angeles	California.
Xceed Financial Federal Credit Union	El Segundo	California.
Monterey County Bank	Monterey	California.
Malaga Bank, FSB	Palos Verdes Estates	California.
American First Credit Union	La Habra	California.
Broadway Federal Bank, FSB	Los Angeles	California.
Oak Valley Community Bank	Oakdale	California.
Bank of America California, N.A	Walnut Creek	California.
Fremont Bank	Fremont	California.
Silvergate Bank	La Jolla	California.
AltaPacific Bank	Santa Rosa	California.
American Perspective Bank	San Luis Obispo	California.
Bank of San Francisco	San Francisco	California.
Bank of Southern California, National Association	Ramona	California.
Bay Federal Credit Union	Capitola	California.
California State Automobile Association Inter-Insurance Bureau	San Francisco	California.

1st Commerce Bank (NV)	North Las Vegas	Nevada.
Federal Home Loan Bank of Seattle—District 12		
Mt. McKinley Bank	Fairbanks	Alaska.
BankPacific	Hagatna	Guam.
First Federal Savings Bank of Twin Falls	Twin Falls	Idaho.
Ireland Bank	Malad	Idaho.
First Security Bank of Malta	Malta	Montana.
Pioneer Federal Savings & Loan Association	Dillon	Montana.
Ravalli County Bank	Hamilton	Montana.
United Banks, N.A	Absarokee	Montana.
Glacier Bank	Kalispell	Montana.
American Federal Savings Bank	Helena	Montana.
Bank of American Fork	American Fork	Utah.
Trans West Credit Union	Salt Lake City	Utah.
Sterling Savings Bank	Spokane	Washington.
Kitsap Bank	Port Orchard	Washington.
Washington Federal Savings	Seattle	Washington.
Horizon Bank	Bellingham	Washington.
Cascade Bank	Everett	Washington.
Bank of Fairfield	Fairfield	Washington.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before March 18, 2011, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2010 second round review cycle. 12 CFR 1290.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member 12 CFR 1290.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2010 first round review cycle must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail to *hmgcommunitysupportprogram@fhfa.gov* on or before the April 18, 2011 deadline for submission of Community Support Statements.

Dated: February 25, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–4979 Filed 3–3–11; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Randal S. and Melissa J. Shannon, both of Drexel, Missouri, individually and as a part of the Shannon Family Group; and Angela Blume, Louisburg, Kansas, as a part of the Shannon Family Group, to acquire control of Amsterdam Bancshares, Inc., and thereby indirectly gain control of Citizens Bank, both of Amsterdam, Missouri.

Board of Governors of the Federal Reserve System, March 1, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–4868 Filed 3–3–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Call for Comments on the Draft Report of the Adult Immunization Working Group to the National Vaccine Advisory Committee on Adult Immunization: Complex Challenges and Recommendations for Improvement

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Vaccine Advisory Committee (NVAC) was established in 1987 to comply with Title XXI of the Public Health Service Act (Pub. L. 99–660) (Section 2105) (42 U.S. Code 300aa–5 (PDF—78 KB)). Its purpose is to advise and make recommendations to the Director of the National Vaccine Program on matters related to program responsibilities. The Assistant Secretary for Health (ASH) has been designated by the Secretary of Health and Human Services as the Director of the National Vaccine Program. The ASH has charged the NVAC "to develop recommendations for establishing a comprehensive, sustainable, national adult immunization program that will lead to vaccine-preventable disease reduction by improving adult immunization coverage levels." The Adult Immunization Working Group (AIWG) of NVAC has developed a draft report and recommendations for the consideration of the NVAC. Individuals and organizations are encouraged to submit their comments on the draft report and recommendations. It is

anticipated that the draft report and recommendations, as revised in accordance with public comment and stakeholder input, will be presented to the NVAC for deliberation and decision for adoption in mid- or late 2011.

DATES: To receive consideration, comments must be received no later than 5 p.m. EST on April 15, 2011.

ADDRESSES:

(1) The draft report and recommendations are available on the Web at *http://www.hhs.gov/nvpo/nvac/subgroups/adultimmunization.*

(2) By electronic mail, comments can be e-mailed to Lauren Wu, National Vaccine Program Office, at *lauren.wu@hhs.gov.*

(3) By mail, comments can be submitted to: NVAC AIWG Report, c/o Lauren Wu, National Vaccine Program Office, 200 Independence Avenue, Room 715–H, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mark Grabowsky, National Vaccine Program Office, 200 Independence Avenue, Room 715–H, Washington, DC 20201, Attn: NVAC Adult Immunization Working Group, Telephone (202) 260–2325; Fax: (202) 690–4631; E-mail: *mark.grabowsky@hhs.gov.*

SUPPLEMENTARY INFORMATION: Over the past two decades, numerous reports and sets of recommendations to address the suboptimal immunization status of adults have been developed. These have been issued by a number of groups, including the NVAC in 1990, 1994, 1997 and 2004; the Institute of Medicine; a 2010 collaboration in between Trust for America's Health, the Infectious Diseases Society of America, and the Robert Wood Johnson Foundation; the 2007 National Immunization Congress; as well as by other groups of independent experts in the field working with Federal agencies. Despite these prior efforts, previous reports and recommendations have not resulted in sufficient improvements in the current status of adult immunization in the U.S. Additionally, recent research has helped to better identify additional barriers to adult immunization, and lessons learned from recent public health experiences—such as the 2009–10 H1N1 pandemic—make clear the need for public health infrastructure for adult vaccines. Prior recommendations have provided the AIWG with examples of successes and opportunities for improvement.

In 2009, the NVAC issued a report directed to Federal agencies' adult immunization programs (*http://www.hhs.gov/nvpo/nvac/subgroups/nvacadultimmunizationsworkinggroupjune2009*). The current draft report represents the work of the NVAC on phase two of this process, a broad examination of the national adult immunization program in accordance with the charge "to develop recommendations for establishing a comprehensive, sustainable, national adult immunization program that will lead to vaccine-preventable disease reduction by improving adult immunization coverage levels." The NVAC includes representatives from public health practitioners, medical providers, health plan payers, consumers, vaccine manufacturers, and HHS agencies. Through review of previous recommendations to improve adult immunization, a comprehensive literature review of barriers to adult immunization, and identification of gaps in the current adult vaccination and immunization system, the AIWG developed draft recommendations to achieve the charge as noted above.

The draft report describes the vaccine-preventable disease burden among adults, the current state of the adult immunization infrastructure, barriers to adult immunization, and the conclusions of the AIWG from these findings. From these conclusions, the AIWG makes 3 recommendations: (1) That there be national leadership for an adult immunization program, (2) That there be resources allocated for a national adult immunization program and action plan implementation, and (3) That a national strategic plan be developed for adult immunization. The report also provides recommended components of a national adult immunization program to be included in an action plan that fall under 5 categories: General infrastructure, access, provider- or system-based interventions, increasing community demand, and research needs.

The final revision of this report will be shared with the NVAC for their deliberation and decision for adoption. Should the NVAC decide to adopt these recommendations, the report will then become a report of the NVAC to the Assistant Secretary for Health.

Dated: March 1, 2011.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. 2011–4879 Filed 3–3–11; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–0591]

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. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–4773 and send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by 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 a 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 clarify 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 information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Select Agent Distribution Activity: Request for Select Agent (OMB Control No. 0920–0591 exp. 2/28/2011)—Reinstatement without change—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC), officially established as a substructure on July 9, 2010.

Background and Brief Description

The Centers for Disease Control and Prevention is requesting a three year extension to continue data collection under the Select Agent Distribution Activity. The form used for this activity is currently approved under OMB Control No. 0920–0591. The purpose of this data collection is to provide a systematic and consistent mechanism to review requests that come to CDC for Select Agents. The term select agents is used to describe a limited group of viruses, bacteria, rickettsia, and toxins

that have the potential for use as agents of bioterrorism, inflicting significant morbidity and mortality on susceptible populations.

In light of current terrorism concerns and the significant NIH grant monies directed toward Select Agent research, CDC receives hundreds of requests for Select Agents from researchers. The approximately 900 applicants are required to complete an application form in which they identify themselves and their institution, provide a Curriculum Vitae or biographical sketch, a summary of their research proposal, and sign indemnification and material transfer agreement statements. In this request, CDC is requesting approval for approximately 450 hours; no change from the currently approved burden. The only correction to this data collection request is updating the name of the National Center on the application form. A user fee will be collected to recover costs for materials, handling and shipping (except for public health laboratories). The cost to the respondent will vary based on which agent is requested.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Researcher	900	1	30/60	450
Total				450

Dated: February 25, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–4948 Filed 3–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–0666]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB No. 0920–0666 exp. 3/31/2012)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and to promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. Healthcare institutions that participate in NHSN voluntarily report their data to CDC using a web browser based technology for data entry and data management. Data are collected by trained surveillance personnel using written standardized protocols. The data will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks.

This revision submission includes an amended Assurance of Confidentiality, which required an update of the Assurance of Confidentiality language on all forms included in the NHSN surveillance system. The scope of NHSN dialysis surveillance is being expanded to include all outpatient dialysis centers so that the existing Dialysis Annual Survey can be used to facilitate prevention objectives set forth in the HHS HAI tier 2 Action Plan and to assess national practices in all Medicare-certified dialysis centers if CMS re-establishes this survey method (as expected). The Patient Safety (PS) Component is being expanded to include long term care facilities to facilitate HAI surveillance in this setting, for which no standardized reporting methodology or mechanism currently exists. Four new forms are proposed for this purpose. A new form is proposed to be added to the Healthcare Personnel Safety (HPS) Component to facilitate summary reporting of influenza vaccination in healthcare workers, which is anticipated to be required by CMS in the near future. In addition to this new form, the scope of the HPS Annual Facility Survey is being expanded to include all acute care facilities that would enroll if CMS does implement this requirement. The NHSN Antimicrobial Use and Resistance module is transitioning from manual web entry to electronic data upload only, which results in a significant decrease to the reporting burden for this package. Finally, there are many updates, clarifications, and data collection revisions proposed in this submission.

CDC is requesting to delete four currently approved forms that are no longer needed by the NHSN and add five new forms

The previously-approved NHSN package included 47 individual data collection forms. If all proposed revisions are approved, the reporting burden will decrease by 1,258,119 hours, for a total estimated burden of 3,914,125 hours and 48 total data collection tools.

Participating institutions must have a computer capable of supporting an Internet service provider (ISP) and access to an ISP. There is no cost to respondents other than their time. The total estimated annual burden hours are 3,914,125.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Responses per respondent	Burden per response (hours)
Infection Preventionist	NHSN Registration Form	6,000	1	5/60
	Facility Contact Information	6,000	1	10/60
	Patient Safety Component—Annual Facility Survey	6,000	1	40/60
	Patient Safety Component—Outpatient Dialysis Center Practices Survey.	5,500	1	1
	Group Contact Information	6,000	1	5/60
	Patient Safety Monthly Reporting Plan	6,000	9	35/60
	Primary Bloodstream Infection (BSI)	6,000	36	32/60
	Dialysis Event	500	75	15/60
	Pneumonia (PNEU)	6,000	72	32/60
	Urinary Tract Infection (UTI)	6,000	27	32/60
Staff RN	Denominators for Neonatal Intensive Care Unit (NICU)	6,000	9	4
	Denominators for Specialty Care Area (SCA)	6,000	9	5
	Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	6,000	18	5
Staff RN	Denominator for Outpatient Dialysis	500	12	5/60
Infection Preventionist	Surgical Site Infection (SSI)	6,000	27	32/60
Staff RN	Denominator for Procedure	6,000	540	10/60
Laboratory Technician	Antimicrobial Use and Resistance (AUR)-Microbiology Data Electronic Upload Specification Tables.	6,000	12	5/60
Pharmacy Technician	Antimicrobial Use and Resistance (AUR)-Pharmacy Data Electronic Upload Specification Tables.	6,000	12	5/60
Infection Preventionist	Central Line Insertion Practices Adherence Monitoring	6,000	100	5/60
	MDRO or CDI Infection Form	6,000	72	32/60
	MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	6,000	24	10/60
	Laboratory-identified MDRO or CDI Event	6,000	240	25/60
	Vaccination Monthly Monitoring Form—Summary Method	6,000	5	14
	Vaccination Monthly Monitoring Form—Patient-Level Method.	2,000	5	2
	Patient Vaccination	2,000	250	10/60
	Patient Safety Component—Annual Facility Survey for LTCF.	250	1	25/60
	Laboratory-identified MDRO or CDI Event for LTCF	250	8	30/60
	MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	250	3	7/60
	Urinary Tract Infection (UTI) for LTCF	250	9	30/60
Occ Health RN	Healthcare Personnel Safety Component Annual Facility Survey.	6,000	1	8
	Healthcare Worker Survey	600	100	10/60
	Healthcare Personnel Safety Monthly Reporting Plan	600	9	10/60
	Healthcare Worker Demographic Data	600	200	20/60
	Exposure to Blood/Body Fluids	600	50	1
	Healthcare Worker Prophylaxis/Treatment	600	10	15/60
Laboratory Technician	Follow-Up Laboratory Testing	600	100	15/60
Occ Health RN	Healthcare Worker Vaccination History	600	300	10/60
Occ Health RN	Healthcare Worker Influenza Vaccination	600	500	10/60
	Healthcare Worker Prophylaxis/Treatment-Influenza	600	50	10/60
	Pre-season Survey on Influenza Vaccination Programs for Healthcare Personnel.	600	1	10/60
	Post-season Survey on Influenza Vaccination Programs for Healthcare Personnel.	600	1	10/60
	Healthcare Personnel Influenza Vaccination Monthly Summary.	6,000	6	2
Clinical Laboratory Technologist.	Hemovigilance Module Annual Survey	500	1	2
	Hemovigilance Module Monthly Reporting Plan	500	12	2/60
	Hemovigilance Module Monthly Incident Summary	500	12	2
	Hemovigilance Module Monthly Reporting Denominators	500	12	30/60
	Hemovigilance Adverse Reaction	500	120	10/60
	Hemovigilance Incident	500	72	10/60

Dated: February 25, 2011.

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–4946 Filed 3–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–0770]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National HIV Behavioral Surveillance System (NHBS) 0920–0770 (exp. 03/31/2011)—Revision-National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to monitor behaviors related to human immunodeficiency virus (HIV) infection among persons at high risk for infection in the United States. The primary objectives of NHBS are to obtain data from samples of persons at risk to: (a) Describe the prevalence and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing and HIV infection; (c) describe the prevalence of and trends in use of HIV prevention services; (d) identify met and unmet needs for HIV prevention services in order to inform health departments, community-based organizations, community planning groups and other stakeholders. This project addresses the goals of CDC's HIV prevention strategic plan, specifically the goal of strengthening the national capacity to monitor the HIV epidemic to better direct and evaluate prevention efforts.

For the proposed data collection, CDC has revised the interview data collection instruments. A few questions were added (related to health care access and utilization, use of pre-exposure prophylaxis, homophobia, HIV stigma, and discrimination), some were removed, and others were revised from the previously approved instrument to make them easier for respondents to understand and respond appropriately. The project activities and methods will remain the same as those used in the previously approved collection.

Data are collected through anonymous, in-person interviews conducted with persons systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States; these 25 MSAs were chosen based on having high AIDS prevalence. Persons at risk for HIV infection to be interviewed for NHBS include men who have sex with men (MSM), injecting drug users (IDUs), and heterosexuals at increased risk of HIV (HET). A brief screening interview will be used to determine eligibility for participation in the behavioral assessment. The data from the behavioral assessment will provide estimates of behavior related to the risk of HIV and other sexually transmitted diseases, prior testing for HIV, and use of HIV prevention services. All persons interviewed will also be offered an HIV test and will participate in a pre-test counseling session. No other Federal agency systematically collects this type of information from persons at risk for HIV infection. These data have substantial impact on prevention program development and monitoring at the local, State, and national levels.

CDC estimates that NHBS will involve, per year in each of the 25 MSAs, eligibility screening for 50 to 200 persons and eligibility screening plus the survey with 500 eligible respondents, resulting in a total of 37,500 eligible survey respondents and 7,500 ineligible screened persons during a 3-year period. Data collection will rotate such that interviews will be conducted among one group per year: MSM in year 1, IDU in year 2, and HET in year 3. The type of data collected for each group will vary slightly due to different sampling methods and risk characteristics of the group.

This request is for a revision and an approval for an additional 3 years of data collection. Participation of respondents is voluntary and there is no cost to the respondents other than their time. The total estimated annualized burden hours are 9,931.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Responses per respondent	Average burden per response (in hours)
Year 1 (MSM):				
Persons Screened	Screener	17,500	1	5/60
Eligible Participants	Survey	12,500	1	30/60
Year 2 (IDU).				
Persons Referred by Peer Recruiters	Screener	13,750	1	5/60
Eligible Participants	Survey	12,500	1	54/60
Peer Recruiters	Recruiter Debriefing	6,250	1	2/60
Year 3 (HET):				
Persons Referred by Peer Recruiters	Screener	13,750	1	5/60
Eligible Participants	Survey	12,500	1	39/60
Peer Recruiters	Recruiter Debriefing	6,250	1	2/60

Dated: February 25, 2011.

Thelma Sims,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–4944 Filed 3–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention—National Biosurveillance Advisory Sbcommittee (NBAS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of aforementioned subcommittee:

Time and Date: 8:30 a.m.–11:30 a.m., March 21, 2011.

Place: Emory Conference Center Hotel, 1615 Clifton Road, NE., Atlanta, Georgia 30329, Telephone: (404) 712–6000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people. The public is welcome to participate during the public comment periods. The public comment period is tentatively scheduled for 11 a.m.–11:15 a.m.

Purpose: As a subcommittee to the CDC's Advisory Committee to the Director (ACD), the NBAS will provide counsel to the CDC and the Federal government through the ACD regarding a broad range of human health surveillance issues arising from the development and implementation of a roadmap for the human health component of a national biosurveillance system.

Matters to be Discussed: Agenda items will include the subcommittee's discussion, deliberation, and vote on the proposed report for enhancing the nation's biosurveillance capability.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Pamela Diaz, M.D., Designated Federal Officer, ACD, CDC—NBAS, 1600 Clifton Road, NE., M/S E–97, Atlanta, Georgia 30333. Telephone: (404) 498–0476. E-mail: *pdiaz@cdc.gov.* For security reasons, members of the public interested in attending the meeting should contact Mark Byers, Telephone: (404) 498–0481, E-mail: *mbyers@cdc.gov.* The deadline for notification of attendance is March 10, 2011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 25, 2011.

Elaine L. Baker,

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

[FR Doc. 2011–4994 Filed 3–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Association of Genetic Biomarkers and Hereditary Hemochromatosis, DD11–008, Initial Review

Correction: This notice was published in the **Federal Register** on January 21, 2011, Volume 76, Number 14, Page 3908. The date for the aforementioned meeting has been changed to the following:

DATES: April 26, 2011 (Closed)

Contact Person for More Information: Michael Dalmat, Dr.P.H., Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, Telephone: (770) 488–6423, E-mail: *MED1@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 25, 2011.

Elaine L. Baker,

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

[FR Doc. 2011–4990 Filed 3–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–102 and CMS–105, and CMS–10241]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments of 1988 (CLIA) Budget Workload Reports and Supporting Regulations in 42 CFR 493.1–.2001; *Use:* The collected information will be used by CMS to determine the amount of Federal reimbursement for surveys conducted. Use of the information includes program evaluation, audit, budget formulation and budget approval. Form CMS–102 is a multi-purpose form designed to capture and record all budget and expenditure data. Form CMS–105 captures the annual projected CLIA workload that the State survey agency will accomplish. It is also used by the CMS regional office to approve the annual projected CLIA workload. The information is required as part of the section 1864 agreement with the State; *Form Numbers:* CMS–102 and CMS–105 (OMB#: 0938–0599); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 4,500. (For policy questions regarding

this collection contact Carla Ausby at 410–786–2153. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Annual State Report and Annual State Performance Rankings; *Use:* Section 6001(f) of the Deficit Reduction Act (DRA) requires CMS to contract with a vendor to conduct a monthly national survey of retail prescription drug prices and to report the prices to the States. These national average prices may be used as a benchmark by the States for the management of their prescription drug programs. The DRA also requires that the States submit pricing information for the 50 most widely prescribed drugs so that the States' prices can be compared to the national average prices obtained from the survey. The States pricing information will be compared and the States will be ranked. The Act also requires that States report their drug utilization rates for noninnovator multiple source (generic) drugs, their payment rates under their State plan, and their dispensing fees. The template has been developed to facilitate data collection; *Form Number:* CMS–10241 (OMB#: 0938–1041); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 765. (For policy questions regarding this collection contact Joseph Fine at 410–786–2128. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on April 14, 2011.

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: *February 23, 2011.*

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–4577 Filed 3–3–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Blood & Marrow Transplant Network Review Meeting.

Date: March 28–29, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: "Courtyard" Crystal City—Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pediatric Heart Network Clinical Centers.

Date: March 28–29, 2011.

Time: 1 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Conference Grant Review.

Date: March 29–30, 2011.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Dana Phares, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0310, *pharesda@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4943 Filed 3–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Research Resources Special Emphasis Panel; Clinical Research.

Date: March 22, 2011.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NCRR/OR, Democracy I, 6701 Democracy Blvd., 1078, Bethesda, MD (Virtual Meeting).

Contact Person: Steven Birken, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 10th FL., Bethesda, MD 20892, (301) 435–1078, *birkens@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure,

93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: February 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4957 Filed 3–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Program Project Supplement.

Date: March 29, 2011.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NAPS2 Continuation.

Date: April 6, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *rw175w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4954 Filed 3–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Human Brown Adipose Tissue.

Date: March 28, 2011.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR08–182: R24 Collaborative Interdisciplinary Team Science.

Date: April 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4953 Filed 3–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urology Small Business Applications.

Date: March 14–15, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral Medicine Interventions and Outcomes.

Date: March 18, 2011.

Time: 2 p.m. to 4:30 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: Michael Micklin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Vascular and Hematology.

Date: March 22–23, 2011.

Time: 11 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Zebrafish.

Date: March 24, 2011.

Time: 8 a.m. to 12 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: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Zebrafish.

Date: March 24, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology and Metabolic Regulation.

Date: March 30, 2011.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Krish Krishnan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4945 Filed 3–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; GenitoUrinary Development Molecular Anatomy Project (GUDMAP)

Date: March 23, 2011.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.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.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nephrolithiasis Program Project.

Date: March 25, 2011.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.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. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4993 Filed 3–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Corpus Luteal Contribution to Maternal Pregnancy Physiology and Outcomes in Art.

Date: March 31, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4992 Filed 3–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National Suicide Prevention Lifeline—Crisis Center Survey—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services funds a National Suicide Prevention Lifeline Network, a system of toll-free telephone numbers that routes calls from anywhere in the United States to a network of more than 147 certified crisis centers that can link callers to local emergency, mental health, and social service resources. The technology permits calls to be directed immediately to a suicide prevention worker who is geographically closest to the caller.

Through its grantee which is administering the National Suicide Prevention Lifeline Network, SAMHSA developed a Crisis Center Survey in an effort to learn more about the capacities, skills, and unmet needs of the crisis centers involved in the Network. The completed Surveys will inform the Network's planning around technological capacity, network recruitment strategies, training, marketing, and other network resource development activities. The goal of this effort is to ensure that the telephonic routing system remains accurate, enhance quality services provided by networked crisis centers, increase service accessibility to people at risk for suicidal behavior, and optimize public health efforts to prevent suicide and suicidal behavior.

All 147 networked crisis centers will complete the Web-based Crisis Center Survey annually. The Survey requests information about organizational structure, staffing, scope of services, call center operations, quality assurance, community outreach/marketing, telephone equipment, data collection, and technical assistance needs.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Total number of responses	Burden/ response (hours)	Annual burden (hours)
National Suicide Prevention Lifeline: Crisis Center Survey	147	1	147	2	294

Written comments and recommendations concerning the proposed information collection should be sent by April 4, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: February 25, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–4870 Filed 3–3–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0137]

Notice of Public Meeting To Prepare for the 55th Session of the International Maritime Organization's Sub-Committee on Ship Design and Equipment (DE) To Be Held March 21 Through 25, 2011

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The United States Coast Guard will conduct a public meeting starting at 9:30 a.m. on Thursday, March 17, 2011, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC, 20593–7126. The primary purpose of the meeting is to prepare for the 55th session of the International Maritime Organization's Sub-Committee on Ship Design and Equipment (DE) to be held at the International Maritime Organization in London, United Kingdom from March 21 through 25, 2011.

DATES: This public meeting will be held beginning at 9:30 a.m., Eastern Time, on Thursday, March 17, 2011.

ADDRESSES: The public meeting will be held in Room 6103 of the United States Coast Guard Headquarters Transpoint building in Washington DC. The Transpoint building is located at 2100 Second Street, Southwest, in Washington, DC, approximately 1 mile from the Southwest-SEU Metro Station. Send written material and requests to make oral presentations to Mr. Wayne Lundy, Commandant (CG–5213), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1300, Washington, DC 20593–7126, by calling (202) 372–1379, or by e-mailing Mr. Lundy at *Wayne.M.Lundy@uscg.mil.* This notice may be viewed in our online docket, USCG–2011–0137, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about this public meeting you may contact Mr. Wayne

Lundy by telephone at 202–372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The primary matters to be considered include:

—Safety provisions applicable to tenders operating from passenger ships
—Performance standards for recovery systems for all types of ships
—Guidelines for a visible element to general alarm systems on passenger ships
—Making the provisions of MSC.1/Circ.1206/Rev.1 mandatory
—Guidelines for the standardization of lifeboat control arrangements
—Development of new framework of requirements for life-saving appliances
—Amendments to Assembly Resolution A.744(18)
—Supporting guidelines for cargo oil tank coating and corrosion protection
—Development of a mandatory Code for ships operating in polar waters
—Revision of resolution A.760(18)
—Protection against noise on board ships
—Noise from commercial shipping and its adverse impacts on marine life
—Classification of offshore industry vessels and consideration of the need for a Code for offshore construction support vessels
—Consideration of IACS unified interpretations
—Measures to promote integrated bilge water treatment systems
—Revision of resolution MEPC.159(55)
—Revision of testing requirements for lifejacket RTDs.

Hard copies of documents associated with the 55th session of DE will be available at this meeting. To request further copies of documents please write to the address provided below.

Members of the public may attend this meeting up to the seating capacity of the room and may submit comments. Those who wish to submit comments or seek additional information about the meeting may contact Mr. Wayne Lundy, Commandant (CG–5213), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1300, Washington, DC 20593–7126, by telephone (202) 372–1379 or e-mail *Wayne.M.Lundy@uscg.mil.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Wayne Lundy at (202) 372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil* as soon as possible.

Dated: March 1, 2011.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2011–4976 Filed 3–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5470–N–02]

Emergency Homeowners' Loan Program: Announcement of Activation of Program and Availability of Emergency Assistance

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

ACTION: Notice.

SUMMARY: This notice announces the reactivation of the Emergency Homeowners' Loan Program, originally established by statute in 1975, and reauthorized, with certain modifications, by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which also made $1 billion in funding available for this program. The Emergency Homeowners' Loan Program provides emergency mortgage relief to homeowners who are unemployed or underemployed and at risk of foreclosure and who meet certain requirements of the program. This notice sets out the requirements and procedures by which emergency relief will be made available to eligible homeowners.

DATES: *Effective Date:* April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–708–0317 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Activation of Emergency Homeowners' Loan Program

The Emergency Housing Act of 1975 (12 U.S.C. 2701), signed into law on July 2, 1975, conferred on HUD, through title I of the statute, entitled the "Emergency Homeowners' Relief Act," standby authority to provide emergency assistance, including emergency mortgage relief loans or advances of credit, and to make emergency mortgage assistance payments for the benefit of certain eligible homeowners to defray their mortgage expenses so as to prevent widespread mortgage foreclosures and distress sales of homes resulting from a homeowner's substantial reduction in income resulting from temporary involuntary loss of employment or underemployment due to adverse economic conditions. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) (Dodd-Frank Act) revised and reauthorized this 1975 statute, and makes available $1 billion to HUD to implement the Emergency Homeowners' Loan program during Fiscal Year (FY) 2011. HUD is reinstating the 1975 program, with such modifications as necessary to mirror the statutory changes made by the Dodd-Frank Act, that provide the regulatory framework by which emergency assistance may be provided to eligible homeowners. This notice announces the activation of the Emergency Homeowners' Loan Program (EHLP), and the availability of emergency mortgage relief payments for eligible homeowners.

II. Emergency Homeowners' Loan Program Funding for FY 2011

For FY 2011, HUD will administer funding under EHLP, as follows:

A. Counseling for Homeowners

HUD, through a network of HUD-approved housing counselors, and other such organizations, will provide homeowners with services that include but are not limited to:

- Developing and disseminating program marketing materials;
- Providing an overview of the program and eligibility requirements;
- Conducting initial eligibility screening (including verifying income);
- Counseling homeowners, including providing information concerning available employment and training resources;
- Collecting and assembling homeowner documentation; and
- Providing transition counseling by exploring with the homeowner other loss mitigation options, including loan modification, short sale, deed-in-lieu of foreclosure, or traditional sale of home.

B. Intermediary to Perform Funds Control and Mortgage Servicing Functions

Pursuant to statutory authority to make such delegations, HUD may contract with a fiscal agent to provide general accounting and fiscal control services, including collecting payments from homeowners, distributing emergency mortgage relief payments to servicers on a monthly basis, performing

accounting, managing loan balances, and providing payoff information.

C. States With Substantially Similar Programs

One of the changes enacted by the Dodd-Frank Act was to authorize the Secretary to allow emergency assistance to be administered by states with existing programs that provide substantially similar assistance to homeowners. On November 12, 2010, HUD published a notice in the **Federal Register** (75 FR 69454) that described key features of HUD's emergency mortgage relief payment program for homeowners, and which solicited applications from states that have existing programs that may be substantially similar to the EHLP (EHLP Substantially Similar Program). (*See http://www.hud.gov/offices/hsg/sfh/hcc/ehlp/ehlphome.cfm.*)

D. Emergency Mortgage Relief Payments

To the extent that a state does not submit information about an existing program that provides substantially similar assistance to homeowners, or such submission does not meet the requirements outlined in HUD's November 12, 2010 notice, HUD will administer the EHLP in that state in accordance with the requirements of Section III of this notice.

The regulations in 24 CFR part 2700, as applicable to emergency mortgage relief payments, apply to the emergency mortgage relief payments made available through this notice, including use of defined terms, eligibility requirements for the homeowner, and mortgaged property, unless otherwise superseded by requirements of this notice. To minimize cross-reference to the regulations, some defined terms and regulatory requirements are repeated in this notice.

III. HUD's Emergency Mortgage Relief Payments Program for 2011

A. Homeowner Eligibility

To be eligible for emergency assistance under the EHLP in FY 2011, a homeowner must have experienced a substantial reduction in income due to involuntary but temporary unemployment or underemployment resulting from adverse economic conditions or medical conditions (referred to as the Event) and meet the requirements set forth in section III.A of this notice. Accordingly the following requirements determine the eligibility of the homeowner to receive emergency mortgage relief payments.

1. *Income Thresholds.* The homeowner, whose income (annual adjusted gross income as "income" is defined in 24 CFR 2700.5) is combined with the income of all mortgagors and/or co-signers on the delinquent mortgage and note,[1] must have a total pre-Event income equal to, or less than, 120 percent of the area median income (AMI), as determined by HUD, of the area in which the homeowner's principal residence is located, and which income includes, but is not limited to, wage, salary, self-employed earnings, and other adjusted gross income.

2. *Substantial Income Reduction.* The homeowner, whose income is combined with the income of all co-makers and/or co-signers on the note secured by the delinquent mortgage and the other mortgagors on the delinquent mortgage, must have a current monthly income that is at least 15 percent lower than the homeowner's pre-Event monthly income, with such reduction resulting from the homeowner's involuntary but temporary unemployment or underemployment due to adverse economic conditions or medical conditions.

3. *Employment.* With respect to employment, the homeowner may be a wage and salary worker or may be self-employed.

4. *Delinquency and Likelihood of Foreclosure.* The homeowner and all co-makers and/or co-signers on the note secured by the delinquent mortgage and all other mortgagors on the delinquent mortgage must certify that circumstances at the time of application for emergency mortgage relief payments, including the homeowner being at least 3 months delinquent on the delinquent mortgage, make it probable that the mortgagee will foreclose on the delinquent mortgage.

5. *Ability to Resume Repayment.* The homeowner must have a reasonable likelihood of being able to resume repayment of the delinquent mortgage obligations, and meet other housing expenses and debt obligations when the homeowner regains full employment, as determined by:

a. The homeowner's income, combined with all mortgagors and/or co-signers on the delinquent mortgage and note, must have a back-end ratio or debt-to-income (DTI) below 55 percent (principal, interest, taxes, insurance, and revolving and fixed installment debt divided by total monthly income). For this calculation, homeowner's combined income will be measured at the pre-Event level.

b. Homeowners with second mortgage debt or an equity line of credit (ELOC) are not disqualified from receiving emergency mortgage relief payments. Applicants with second mortgage payments or ELOC payments whose DTI ratio is within the program's 55 percent limit may still qualify for emergency mortgage relief payments based on all other program eligibility criteria.

6. *Principal Residence.* The homeowner must occupy the mortgaged property as the homeowner's principal residence. The mortgaged property must also be a single-family residence (1-to 4-unit structure, or condominium, cooperative, or manufactured home).

B. Terms and Conditions of Emergency Mortgage Relief Payments

1. *Declining Balance Loans.* The repayment mechanism for the emergency mortgage relief payments made on behalf of the homeowner to the mortgagee shall be a declining balance, deferred payment, non-recourse, subordinate loan with zero interest. The declining balance loan will cover emergency mortgage relief payments provided for arrearages, including delinquent taxes and insurance, in accordance with section III.B.2., and up to 24 months of monthly payments on the homeowner's delinquent mortgage to include principal, interest, insurance, taxes, and hazard insurance, in accordance with section III.B.3.

2. *Use of Funds for Arrearages.* Emergency mortgage relief payments shall be used to pay 100 percent of the eligible homeowner's delinquent mortgage arrearages (such as mortgage insurance, principal, interest, insurance, taxes, hazard insurance, and ground rent, homeowners' assessment fees, late fees, condominium fees, and certain foreclosure-related legal fees and late payments, if any) on the homeowner's delinquent mortgage.

3. *Homeowner Contribution Payments.* The homeowner contribution to the delinquent mortgage monthly mortgage payment shall be set at 31 percent of the sum of the eligible homeowner's monthly income at the time of EHLP application and the monthly income of all other mortgagors and co-signers (if applicable) of the delinquent mortgage and note at the time of EHLP application, but in no instance will the homeowner contribution to the monthly mortgage payment be less than $25 per month.

4. *Use of Funds for Continuing Mortgage Assistance.* Monthly emergency mortgage relief payments on the delinquent mortgage shall be made to the mortgagee or servicing institution

[1] Mortgagors and co-signers who are covered by this provision do not have to have signed both documents. If only one document is signed by an individual, both are covered under this provision.

in combination with the homeowner contribution payments.

5. *Duration of Emergency Mortgage Relief Payments.* If at any time the homeowner's monthly income, including all other co-makers and co-signers of the note secured by the delinquent mortgage and other mortgagors on the delinquent mortgage, increases to greater than 85 percent or more of its pre-Event income level, emergency mortgage relief payments will be phased out over a 2-month period. In any event, the aggregate amount of emergency mortgage relief payments provided to any homeowner shall not exceed the earlier in occurrence of: (i) The receipt of $50,000, or (ii) 23 months beyond the date of the first payment (this period includes the first emergency mortgage relief payment, which is inclusive of the first monthly emergency mortgage relief payment, and the payment of arrearages).

C. Repayment Terms

1. *Transition Counseling.* A housing counseling affiliate shall contact each homeowner who is approaching the last months of EHLP participation and who remains unemployed or underemployed (approximately 3 to 5 months before the emergency mortgage relief payments end) and require the homeowner to meet with a HUD-approved counseling agent to explore alternative available options, such as loss mitigation, loan modification, short sale, deed-in-lieu of foreclosure, or traditional sale of home.

2. *Repayment of Emergency Mortgage Assistance Payment.* As a condition of the homeowner's approval for participation in the EHLP, the homeowner shall execute an EHLP Note and EHLP Mortgage in the amount of EHLP funds, which may not exceed $50,000. The EHLP Mortgage shall be secured by the mortgaged property in either second- or third-lien position (as applicable depending on the existence of a second-lien mortgage). The EHLP Note shall be in the form of a 5-year deferred declining balance, zero interest, nonrecourse note with a term of up to 7 years.

3. *Terms for Declining Balance Feature.* No payment is due on the EHLP Note during the term of the EHLP Note, so long as the homeowner remains current on the homeowner contribution payment while receiving emergency mortgage relief payments and on the homeowner's full monthly payments on the delinquent mortgage once the homeowner is no longer receiving emergency mortgage relief payments. If the homeowner meets this requirement, the balance due on the principal balance of the EHLP Note shall decline by 20 percent of the original principal amount, annually, until the balance owed on the EHLP Note is extinguished.

4. *Ongoing Qualification of Homeowner.* After initial income verification at intake, the homeowner shall be required to notify the housing counseling agency of any changes in the homeowner's income and/or employment status during the entire period in which emergency mortgage relief payments are provided.

5. *Termination of Emergency Mortgage Relief Payments.* Emergency mortgage relief payments will terminate and the homeowner will resume full responsibility for meeting the monthly payments on the delinquent mortgage in the event of the occurrence of one or more of the following circumstances:

a. The homeowner has received 24 months of emergency mortgage relief payments or assistance in the amount of $50,000, whichever occurs first;

b. The homeowner fails to report changes in employment status or income within 15 days of the change;

c. The homeowner's monthly income, combined with that of all mortgagors and/or co-signers on the delinquent mortgage and note, increases to greater than 85 percent or more of its pre-Event income level;

d. The homeowner sells the mortgaged property or refinances the mortgaged property for cash-out;

e. The homeowner defaults on the homeowner contribution payments; or

f. The homeowner defaults on the delinquent mortgage.

6. *Events Triggering EHLP Note Repayment.* The homeowner will be responsible for repayment of the outstanding balance of the EHLP Note, if, at any time during the term of the EHLP Note, one or more of the following events occur:

a. The homeowner defaults on the homeowner contribution payments while receiving emergency mortgage relief payments or on the full monthly payment owed on the delinquent mortgage once the homeowner is no longer receiving emergency mortgage relief payments; or

b. The homeowner sells the mortgaged property, resulting in net proceeds to the homeowner, and satisfies the outstanding balance on the EHLP Note or the homeowner refinances the mortgaged property and satisfies the outstanding balance on the EHLP Note. Net proceeds from sale of the mortgaged property shall be an amount equivalent to the contract sales price of the mortgaged property less applicable brokers fees, payoff of first- and (if applicable) second- and third-lien mortgage balances, and an allowance of $2,000 to the homeowner for relocation expenses. Net proceeds shall go towards satisfying the EHLP Note. In the event that net proceeds are not sufficient to satisfy the outstanding balance of the EHLP Note, any outstanding balance in excess of net proceeds shall be written off by HUD and net proceeds shall be sufficient to fully satisfy the EHLP Note and the EHLP Mortgage against the mortgaged property shall be released.

In the event of a cash-out refinance of the homeowner's delinquent mortgage (and/or second mortgage, as applicable), the outstanding balance of the EHLP Note shall be repaid from remaining cash-out proceeds available after the homeowner's delinquent mortgage (and/or second mortgage, as applicable) has been paid off, including the payment of all applicable closing costs, and the EHLP Mortgage against the property shall be released.

In the event remaining cash-out proceeds from a cash-out mortgage refinance are not sufficient to satisfy the outstanding balance of the homeowner's EHLP Note, any outstanding balance in excess of net proceeds shall be written off by HUD and the remaining cash-out proceeds shall be sufficient to fully satisfy the EHLP Note and the EHLP Mortgage against the mortgaged property shall be released.

7. *Administration of Emergency Homeowners' Loans.* HUD will work with its fiscal agent in the states that have been allocated funding for the EHLP, but are not a part of the EHLP Substantially Similar Program, to make emergency mortgage relief payments to eligible homeowners under this notice and the regulations in 24 CFR part 2700.

Dated: February 28, 2011.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–4817 Filed 3–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–FHC–2011–N034; 53330–1335–0000–J3]

Lake Champlain Sea Lamprey Control Alternatives Workgroup

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a

meeting of the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup). The Workgroup's purpose is to provide, in an advisory capacity, recommendations and advice on research and implementation of sea lamprey control techniques alternative to lampricide that are technically feasible, cost effective, and environmentally safe. The primary objective of the meeting will be to discuss potential research initiatives that may enhance alternative sea lamprey control techniques. The meeting is open to the public.

DATES: The Workgroup will meet on Wednesday, March 23, 2011, 1 p.m. to 4 p.m., with an alternate date of Tuesday, March 29, 2011, from 11 a.m. to 2 p.m., should the meeting need to be cancelled due to inclement weather. Any member of the public who wants to find out whether the meeting has been postponed may contact Ms. Stefi Flanders at 802–872–0629, extension 10 (telephone), or *Stefi_Flanders@fws.gov* (electronic mail) during regular business hours on the primary meeting date.

ADDRESSES: The meeting will be held at the Lake Champlain Basin Program/Vermont Fish and Wildlife Department facility at the Gordon Center House, 54 West Shore Road, Grand Isle, VT 05458; 802–372–3213 (telephone).

FOR FURTHER INFORMATION CONTACT: Dave Tilton, Designated Federal Officer, Lake Champlain Sea Lamprey Control Alternatives Workgroup, Lake Champlain Fish and Wildlife Resources Office, U.S. Fish and Wildlife Service, 11 Lincoln Street, Essex Junction, VT 05452 (U.S. mail); 802–872–0629 (telephone); *Dave_Tilton@fws.gov* (electronic mail).

SUPPLEMENTARY INFORMATION: We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). The Workgroup's specific responsibilities are to provide advice regarding the implementation of sea lamprey control methods alternative to lampricides, to recommend priorities for research to be control methods alternative to lampricides, to recommend priorities for research to be conducted by cooperating organizations and demonstration projects to be developed and funded by State and Federal agencies, and to assist Federal and State agencies with the coordination of alternative sea lamprey control research to advance the state of the science in Lake Champlain and the Great Lakes.

Dated: February 17, 2011.

James G. Geiger,

Acting Assistant Regional Director—Fisheries, U.S. Fish and Wildlife Service, Hadley, Massachusetts 01035.

[FR Doc. 2011–4980 Filed 3–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2011–N033]

Wildlife and Hunting Heritage Conservation Council Teleconference

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public teleconference of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: We will hold the teleconference on Wednesday, March 23, 2011, 2 p.m. to 5 p.m. (Eastern Standard Time). If you wish to listen to or participate in the teleconference proceedings, or submit written material for the Council to consider during the teleconference, notify Joshua Winchell by Monday, March 21, 2011. *See* instructions under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 N. Fairfax Dr., Mailstop 3103–AEA, Arlington, VA 22203; (703) 358–2639 (phone); (703) 358–2548 (fax); or *joshua_winchell@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we give notice that the Council will hold a teleconference (*see* **DATES**).

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

(a) Benefit recreational hunting;

(b) Benefit wildlife resources; and

(c) Encourage partnership among the public, the sporting conservation community, the shooting and hunting sports industry, wildlife conservation organizations, the States, Native American tribes, and the Federal Government.

The Council advises the Secretary of the Interior (DOI) and the Secretary of Agriculture (USDA), reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

(a) Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;

(b) Increasing public awareness of and support for the Sport Wildlife Trust Fund;

(c) Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;

(d) Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;

(e) Fostering communication and coordination among State, Tribal, and Federal Government; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;

(f) Providing appropriate access to Federal lands for recreational shooting and hunting;

(g) Providing recommendation to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and

(h) When requested by the agencies' designated ex officio members, or the Designated Federal Officer in consultation with the Council Chairman, performing a variety of assessments or reviews of policies, programs, and efforts, through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will convene to: (1) Discuss DOI and USDA's 2012 proposed budgets as they relate to programs relevant to the Council's charge, and (2) discuss the National Wildlife Refuge System Vision document. We will post the final agenda on the Internet at *http://www.fws.gov/whhcc.*

Procedures for Public Input

Interested members of the public may listen to or present relevant oral information, or submit a relevant written statement for the Council to consider during the public meeting. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral

statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council.

Individuals or groups can listen to or make an oral presentation at the public Council teleconference. Oral presentations will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. In order to listen to or participate in this teleconference, you must register by close of business on March 21, 2011. Please submit your name, e-mail address, and phone number to Joshua Winchell, Council Coordinator (*see* **FOR FURTHER INFORMATION CONTACT**).

Written statements must be received by March 21, 2011, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via e-mail. Please submit your statement to Joshua Winchell, Council Coordinator (*see* **FOR FURTHER INFORMATION CONTACT**).

The Council Coordinator will maintain the teleconference's summary minutes, which will be available for public inspection at the location under **FOR FURTHER INFORMATION CONTACT** during regular business hours within 30 days after the teleconference. You may purchase personal copies for the cost of duplication.

Dated: February 23, 2011.

Rowan W. Gould,

Director.

[FR Doc. 2011–4835 Filed 3–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–11–L19100000–BJ0000–LRCMK0R04770]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey, Wyoming

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 21, and the survey of the subdivision of section 21 and meander of the present left bank of North Fork Popo Agie River, and the metes and bounds survey of Lots 5 and 6, section 21, Township 2 South, Range 1 West, Wind River Meridian, Wyoming, Group No. 817, was accepted February 24, 2011.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: February 28, 2011.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2011–4942 Filed 3–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–14300000–ET0000; HAG–11–0188; WAOR–7964]

Public Land Order No. 7759; Extension of Public Land Order No. 6833; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6833 for an additional 20-year period. The extension is necessary to continue to protect the unique natural and ecological research values of the United States Forest Service's Wolf Creek Research Natural Area.

DATES: *Effective Date:* March 21, 2011.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, Bureau of Land Management, Oregon/Washington State Office, 503–808–6189, or Gregory B. Graham, Okanogan-Wenatchee National Forest, 509–664–9262.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue the protection of the unique natural and ecological research values at the Wolf Creek Research Natural Area. The withdrawal extended by this order will expire on March 20, 2031, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, *it is ordered* as follows:

Public Land Order No. 6833 (56 FR 11940 (1991)), which withdrew 142.90 acres of National Forest System land from location and entry under the United States mining laws (30 U.S.C. ch. 2) to protect the Wolf Creek Research Natural Area, is hereby extended for an additional 20-year period until March 20, 2031.

Authority: 43 CFR 2310.4.

Dated: February 23, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–4869 Filed 3–3–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV920000 L91310000.PP0000 241A, 11–08807; N–89307; MO#4500019300; TAS: 14X5575]

Notice of Realty Action: Opening of Public Land in Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This Notice opens 320 acres of public land located in Elko County, Nevada, to leasing under applicable geothermal leasing laws subject to valid existing rights and reserved interest in the land.

DATES: *Effective Date:* March 4, 2011.

ADDRESSES: Bureau of Land Management, Elko District Office, Wells Field Office, 3900 East Idaho Street, Elko, Nevada 89801.

FOR FURTHER INFORMATION CONTACT: Bryan Fuell, Field Manager, Wells Field Office, at the above address, telephone: (775) 753–0210 or e-mail: *bryan_fuell@blm.gov.*

SUPPLEMENTARY INFORMATION: The subject land was re-conveyed to the United States by Grant Deed dated May 28, 1952, as part of a land exchange completed under Section 8 of the Taylor Grazing Act, reserving to the grantor all

"petroleum, gas, asphaltum and other hydrocarbons." A decision dated August 11, 1952, states that the United States accepted title of the re-conveyed lands with "a reservation of minerals." Section 8 of the Taylor Grazing Act required that an Opening Order be published before the United States could open the re-conveyed lands to mineral entry, leasing, or other public land laws for the minerals not reserved to the private party in the 1952 deed. An Opening Order, dated November 6, 1958 (23 FR 8674) was issued on the re-conveyed lands, however, the Order did not explicitly include the applicable geothermal leasing laws. The subject land is described as follows:

Mount Diablo Meridian

T. 38 N., R. 59 E.,
sec. 13, E½.

The area described contains 320 acres, more or less, in Elko County.

On publication of this notice in the **Federal Register**, the lands described shall be opened to the operation of the geothermal leasing laws, 30 U.S.C. 1001 *et seq.,* subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

This proposed action is in compliance with the Bureau of Land Management Wells Resource Management Plan approved July 7, 1985, and meets Departmental criteria for a categorical exclusion from the National Environmental Policy Act and its requirement to prepare either an Environmental Assessment or an Environmental Impact Statement.

Authority: 43 CFR part 2370.

Amy Lueders,

State Director, Nevada.

[FR Doc. 2011–4971 Filed 3–3–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000; WYW174596]

Notice of Availability of the Record of Decision for the Wright Area South Hilight Field Coal Lease-by-Application and Environmental Impact Statement, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the South Hilight Field Coal Lease-by-Application (LBA) included in the Wright Area Coal Lease Applications Environmental Impact Statement (EIS).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/Wright-Coal.html.* Paper copies of the ROD are also available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and
- Bureau of Land Management, Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604.

FOR FURTHER INFORMATION CONTACT: Mr. Tyson Sackett, Acting Wyoming Coal Coordinator, at 307–775–6487, or Ms. Sarah Bucklin, EIS Project Manager, at 307–261–7541. Mr. Sackett's office is located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Ms. Bucklin's office is located at the BLM High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability is for the South Hilight Field Coal Tract and addresses leasing Federal coal in Campbell County, Wyoming, administered by the BLM Wyoming High Plains District Office. The BLM approves Alternative 2, which is the preferred alternative for this LBA in the Wright Area Coal Final EIS. Under Alternative 2, the BLM will offer the South Hilight Field Coal LBA area, as modified by the BLM, for lease. This LBA area includes approximately 1,976.69 acres, more or less. The BLM estimates that it contains approximately 222,676,000 tons of mineable Federal coal reserves under the selected configuration.

The BLM will announce a competitive coal lease sale in the **Federal Register** at a later date. The Environmental Protection Agency published a **Federal Register** notice announcing that the Final EIS was publicly available on July 30, 2010 (75 FR 44951).

This decision is subject to appeal to the Interior Board of Land Appeals (IBLA), as provided in 43 CFR part 4, within thirty (30) days from the date of publication of this NOA in the **Federal Register.** The ROD contains instructions for filing an appeal with the IBLA.

Donald A. Simpson,

State Director.

[FR Doc. 2011–4801 Filed 3–3–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on November 8–9, 2011, in Reno, NV, in room 103 of the National Judicial College. The National Judicial College is located on the upper campus of the University of Nevada-Reno, and is sited west of the intersection of Evans Avenue and Jodi Drive, just north of the Education building and south of the Applied Research Facility.

The agenda for this meeting will include the presentation, discussion, and adoption (conditional or otherwise) of the draft Review Committee Report to the Congress for 2011; appointment of the subcommittee to draft the Review Committee's Report to the Congress for 2012, and discussion of the scope of the Report; National NAGPRA Program reports; and the selection of the date and site for the spring 2013 meeting. In addition, the agenda may include requests to the Review Committee for a recommendation to the Secretary of the Interior, as required by law, in order to effect the agreed-upon disposition of Native American human remains determined to be culturally unidentifiable; presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public; requests to the Review Committee, pursuant to 25 U.S.C. 3006(c)(3), for review and findings of fact related to the identity or cultural affiliation of human remains or other cultural items, or the return of such items; and the hearing of disputes among parties convened by the Review Committee pursuant to 25 U.S.C. 3006(c)(4). The agenda for this meeting

will be posted on or before October 11, 2011, at *http://www.nps.gov/nagpra.*

The Review Committee is soliciting presentations by Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on the progress made, and any barriers encountered, in implementing NAGPRA. The Review Committee also will consider other presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. A presentation request must, at minimum, include an abstract of the presentation and contact information for the presenter(s). Presentation requests must be received by August 23, 2011.

The Review Committee will consider requests for a recommendation to the Secretary of the Interior, as required by law, in order to effect the agreed-upon disposition of Native American human remains determined to be culturally unidentifiable (CUI). A CUI disposition request must include the appropriate, completed form posted on the National NAGPRA Program Web site and, as applicable, the ancillary materials noted on the form. To access and download the appropriate form—either the form for CUI with a "tribal land" or "aboriginal land" provenience or the form for CUI without a "tribal land" or "aboriginal land" provenience—go to *http://www.nps.gov/nagpra,* and then click on "Request for CUI Disposition Form." CUI disposition requests must be received by August 16, 2011.

The Review Committee will consider requests, pursuant to 25 U.S.C. 3006(c)(3), for review and findings of fact related to the identity or cultural affiliation of human remains or other cultural items, or the return of such items, where consensus among affected parties is unclear or uncertain. A request for findings of fact must include the completed form posted on the National NAGPRA Program Web site and, as applicable, the ancillary materials noted on the form. To access and download the form, go to *http://www.nps.gov/nagpra,* and then click on "Request for Findings of Fact (Not a Dispute) Form." Requests for findings of fact must be received by July 19, 2011.

The Review Committee will consider requests, pursuant to 25 U.S.C. 3006(c)(4), to convene parties and facilitate a dispute, where consensus clearly has not been reached among affected parties regarding the identity or cultural affiliation of human remains or other cultural items, or the return of such items. A request to convene parties and facilitate a dispute must include the completed form posted on the National NAGPRA Program Web site and, as applicable, the ancillary materials noted on the form. To access and download the form, go to *http://www.nps.gov/nagpra,* and then click on "Request to Convene Parties and Facilitate a Dispute Form." Requests to convene parties and facilitate a dispute must be received by July 1, 2011.

A submission of 10 pages or less may be made in one of two ways:

1. *Electronically (preferred).* Electronic submissions are to be sent to: *David_Tarler@nps.gov.*

2. *By mail.* Mailed submissions are to be sent to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street, NW., 8th Floor (2253), Washington, DC 20005.

A submission of more than 10 pages may be made in one of two ways:

1. By mail, on a single compact disc (preferred).

2. By mail, in hard copy, with 14 copies of the submission.

Documents submitted are subject to posting on the National NAGPRA Program Web site prior to the meeting. Items produced at the meeting are subject to posting after the meeting.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available on the National NAGPRA Program Web site, at *http://www.nps.gov/nagpra.* For the Review Committee's meeting procedures, click on "Review Committee," then click on "Procedures." Meeting minutes may be accessed by going to the Web site; then clicking on "Review Committee;" and then clicking on "Meeting Minutes." Approximately fourteen weeks after each Review Committee meeting, the meeting transcript is posted for a limited time on the National NAGPRA Program Web site.

The Review Committee was established in Section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3006. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is carried out during the course of meetings that are open to the public.

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: February 1, 2011.

David Tarler,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2011–4959 Filed 3–3–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–602]

In the Matter of Certain GPS Devices and Products Containing Same; Enforcement Proceeding; Modification Proceeding; Notice of Commission Determination Not To Review an Initial Determination (Order No. 6) Terminating the Enforcement Proceeding and an Initial Determination (Order No. 13) Terminating the Modification Proceeding Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determinations ("ID") (Order No. 6) terminating the enforcement proceeding and (Order No. 13) terminating the modification proceeding based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential

documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The underlying investigation was instituted on May 7, 2007, based on a complaint filed by Global Locate, Inc., a subsidiary of Broadcom Corporation (collectively, "Broadcom"). 72 FR 25777 (2007). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain GPS devices and products containing the same by reason of infringement of various claims of U.S. Patents. The complaint in the underlying investigation named various respondents. On January 15, 2009, the Commission found a violation of section 337 by the respondents by reason of infringement of all asserted patents. The Commission issued a limited exclusion order and cease-and-desist orders against the respondents. Respondents subsequently appealed the Commission's final determination to the United States Court of Appeals for Federal Circuit ("Federal Circuit"). In a precedential opinion issued April 12, 2010, the Federal Circuit affirmed the Commission's Final Determination in all respects.

On August 16, 2010, the Commission instituted modification proceedings based on a petition seeking modification of the Commission's remedial orders filed by the respondents. On December 7, 2010, the Commission also instituted enforcement proceedings based on an enforcement complaint filed by Broadcom.

On January 14, 2011, Broadcom and the respondents filed joint motions to terminate these proceedings based on a settlement agreement. On January 27, 2011, the Commission investigative attorney supported the joint motions for termination.

On January 28, the ALJ granted the joint motions to terminate these proceedings and issued the subject IDs. No petitions for review of the IDs were filed. The Commission has determined not to review the subject IDs.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: February 28, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordiator.

[FR Doc. 2011–4849 Filed 3–3–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on February 28, 2011, a proposed consent decree ("proposed Decree") in *United States* v. *Powertrain, Inc., et al.,* Civil Action No. 1:09–cv–00993, was lodged with the United States District Court for the District of Columbia.

In this action under Sections 203, 204, 205, 207, 208, and 213 of the Clean Air Act,, 42 U.S.C. 7522, 7523, 7524, 7541, and 7547, and the regulations promulgated thereunder at 40 CFR Part 90, the United States' complaint alleges that Defendants Powertrain, Inc., Wood Sales Co., Inc., and Tool Mart, Inc. imported, or caused the importation of, and sold or otherwise introduced into commerce, engines that were not covered by EPA certificates of conformity, lacked legally sufficient emissions-control labels, and lacked sufficient emissions-related warranties; and failed to maintain required records and fully respond to an EPA Information Request.

The proposed Decree requires Defendants to jointly pay a $2 million civil penalty to the United States and perform the following injunctive measures: Export or destroy noncompliant engines in Defendants' inventory; implement a Corporate Compliance Plan, with enhanced inspection and emissions testing requirements; and mitigate past excess emissions with one or more emissions offset programs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Powertrain Inc., et al.,* D.J. Ref. 90–5–2–1–09332.

During the public comment period, the proposed Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–4936 Filed 3–3–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Correction

In notice document 2011–3945 appearing on pages 10067–10068 in the issue of Wednesday, February 23, 2011, make the following correction:

On page 10068, in the first column, in the third paragraph after the table, in the eighth and ninth lines, "[insert date 30 days from date of publication]" should read "March 25, 2011."

[FR Doc. C1–2011–3945 Filed 3–3–11; 8:45 am]

BILLING CODE 1505–01–D

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 11–02]

Notice of the March 23, 2011 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Wednesday, March 23, 2011.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Melvin F. Williams, Jr., Vice President, General Counsel and Corporate Secretary via e-mail at *Corporatesecretary@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting to discuss upcoming compact closeouts, approach to results reporting and an update on compact operations. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: March 1, 2011.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

[FR Doc. 2011–5008 Filed 3–2–11; 11:15 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–020)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA seek to provide engaging experiences to the public to educate them about NASA technology that they use in their life and change their attitudes about NASA based on the interaction. Pre and post customer satisfaction surveys will be administered to measure the effectiveness of these efforts.

II. Method of Collection

Electronic.

III. Data

Title: NASA Exhibit Surveys.
OMB Number: 2700-xxxx.
Type of Review: Regular.
Affected Public: Individuals or households, Federal Government.
Number of Respondents: 100,000.
Responses per Respondent: 1.
Annual Responses: 100,000.
Annual Burden Hours: 2000.
Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2011–4845 Filed 3–3–11; 8:45 am]

BILLING CODE P

OFFICE OF THE FEDERAL REGISTER

Publication Procedures for Federal Register Documents During a Funding Hiatus

AGENCY: Office of the Federal Register.

ACTION: Notice of special procedures.

SUMMARY: In the event of an appropriations lapse, the Office of the Federal Register (OFR) would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

FOR FURTHER INFORMATION CONTACT: Amy Bunk, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the Federal Register, National Archives and Records Administration, (202) 741–6030 or *Fedreg.legal@nara.gov.*

SUPPLEMENTARY INFORMATION: Due to the possibility of a lapse in appropriations and in accordance with the provisions of the Antideficiency Act, as amended by Public Law 101–508, 104 Stat. 1388 (31 U.S.C. 1341), the Office of the Federal Register (OFR) announces special procedures for agencies submitting documents for publication in the **Federal Register**.

In the event of an appropriations lapse, the OFR would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

During a funding hiatus affecting one or more Federal agencies, the OFR will remain open to accept and process documents authorized to be published in the daily **Federal Register** in the absence of continuing appropriations. An agency wishing to submit a document to the OFR during a funding hiatus must attach a transmittal letter to the document which states that publication in the **Federal Register** is necessary to safeguard human life, protect property, or provide other emergency services consistent with the performance of functions and services exempted under the Antideficiency Act.

Under the August 16, 1995 opinion of the Office of Legal Counsel of the Department of Justice, exempt functions and services would include activities such as those related to the constitutional duties of the President, food and drug inspection, air traffic control, responses to natural or manmade disasters, law enforcement and supervision of financial markets. Documents related to normal or routine activities of Federal agencies, even if funded under prior year appropriations, will not be published.

At the onset of a funding hiatus, the OFR may suspend the regular three-day publication schedule to permit a limited number of exempt personnel to process emergency documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

Authority: The authority for this action is 44 U.S.C. 1502 and 1 CFR 2.4 and 5.1.

Dated: March 1, 2011.

Raymond A. Mosley,

Director of the Federal Register.

[FR Doc. 2011–4875 Filed 3–3–11; 8:45 am]

BILLING CODE 1505–02–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings

TIME AND DATES:

All meetings are held at 2:30 p.m.

Tuesday, March 1;
Wednesday, March 2;
Thursday, March 3;
Tuesday, March 8;
Wednesday, March 9;
Thursday, March 10;
Tuesday, March 15;
Wednesday, March 16;
Thursday, March 17;
Tuesday, March 22;
Wednesday, March 23;
Thursday, March 24;
Tuesday, March 29;
Wednesday, March 30;
Thursday, March 31.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

Status: Closed.

Matters To Be Considered: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." *See* also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Henry S. Breiteneicher, Associate Executive Secretary, (202) 273–2917.

Dated: March 2, 2011.

Henry S. Breiteneicher,

Associate Executive Secretary.

[FR Doc. 2011–5083 Filed 3–2–11; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: April 13, 2011; 8:30 a.m.–5 p.m., April 14, 2011; 8:30 a.m.–1:30 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for geosciences.

Agenda

April 13, 2011

- Directorate activities and plans including discussion of FY 2012 NSF–Wide Investments.
- Topical Subcommittee Meetings.
- Meeting with the Director.

April 14, 2011

- Division Subcommittee Meetings.
- Divisional and Topical Subcommittee Reports.
- Action Items/Planning for Fall Meeting.

Dated: March 1, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–4876 Filed 3–3–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov* This information may also be requested by telephoning, 703/292–8182.

Dated: March 1, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–4934 Filed 3–3–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Notice of Delegation of Authority

In accordance with Section 1863(e)(2) of the National Science Foundation Act, as amended, the National Science Board (Board) hereby gives notice in regards to a delegation of authority provided to the Director, National Science Foundation (NSF), as follows:

Per resolution adopted unanimously at the National Science Board meeting on February 16, 2011, the Board revised its earlier award-approval delegation to the NSF Director by increasing the award threshold requiring Board

approval from "1 percent or more of the awarding Directorate's or Office's prior year current plan or $3 million—whichever is greater"—to the greater of either 1 percent or more of the awarding Directorate's or Office's prior year current plan or 0.1 percent or more of the prior year total NSF budget.

The Board also added a provision to the delegation to highlight existing NSF policy requiring the NSF Director to make no award from the Major Research Equipment and Facilities Construction (MREFC) account without the prior approval of the Board, as required by law.

Finally, the Board clarified a previous delegation by making clear that in the case of procurements requiring Board approval, when the Board approves or authorizes the Director to make an award and no amount is specified in the Board resolution, the Director may subsequently amend the award to change the expiration date of the award and/or to commit additional sums not to exceed the lesser of 10 million dollars or 20 percent of the contract ceiling award amount.

Point of contact is: Jennie Moehlmann, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2011–4856 Filed 3–3–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0023; Docket No. 50–382]

Entergy Operations, Inc. Waterford Steam Electric Station, Unit 3 Exemption

1.0 Background

Entergy Operations, Inc. (Entergy, the licensee) is the holder of Facility Operating License Number NPF–42, which authorizes operation of the Waterford Steam Electric Station, Unit 3 (Waterford 3). 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 one pressurized-water reactor located in Saint Charles Parish, Louisiana.

2.0 Request/Action

By letter dated May 27, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML101520325), and supplemented by letters dated November 3 and 29, 2010 (ADAMS Accession Nos. ML103090716 and ML103350158, respectively), Entergy requested an exemption, pursuant to Section 26.9, "Specific exemptions," of Title 10 of the Code of Federal Regulations (10 CFR), from the requirements of Sections 26.205(c) and (d) during declarations of severe weather conditions, such as a tropical storm and hurricane-force winds, as described in Entergy's document, Procedure ENS–EP–302, "Severe Weather Response." The requested exemption would apply to individuals who perform duties identified in 10 CFR 26.4(a)(1) through (a)(5) who are sequestered in the event of severe winds and who would need to be available to ensure the plant remains in a safe and secure status to protect the public.

Waterford 3 is located in a coastal area and has a likelihood of being affected by hurricane watches and warnings or inland hurricane wind watches and warnings caused by a hurricane impacting the coast. The most recent events were Hurricanes Katrina (August 27, 2005) and Gustav (August 31, 2008). In both events, the site was under a hurricane warning. Widespread evacuations were required for both storms and response personnel were sequestered on site. The site entered an Unusual Event in both cases. The exemption request proposes to extend the exception provided by Section 26.207(d) for pre-defined entry and exit conditions related to hurricane events because the sequestering of plant personnel and related staff resource limitations may occur at times prior to and following the hurricane.

The exemption will allow Waterford 3 to sequester individuals on-site, when travel to and from the site during high-wind conditions may be hazardous or simply not possible. If conditions are such that sustained winds of 74 mile per hour are present on-site, then Waterford 3 must declare a notice of Unusual Event (UE). When this declaration is made, an exemption from work hour controls is available under 10 CFR 26.207(d).

The regulations in 10 CFR 26.205(c), "Work hours scheduling," a performance-based provision, require that licensees schedule the work hours of individuals who are subject to this section consistent with the objective of preventing impairment from fatigue due to duration, frequency, or sequencing of successive shifts. The regulations in 10 CFR 26.205(d), "Work hour controls," specify the maximum work hour limits, the minimum break requirements and the minimum day-off requirements for covered workers.

After the high-wind conditions pass, wind damage to the plant and surrounding area might preclude sufficient numbers of individuals from immediately returning to the site. Additionally, if mandatory civil evacuations were ordered, this would possibly delay the return of sufficient relief personnel. In its letter dated November 3, 2010, the licensee clarified that the exemption will be exited if the relevant hurricane watch/warning or Inland Hurricane Watch/Warning has been canceled; if weather conditions and highway infrastructure support safe travel; and if relief crews are available to restore normal shift rotation determined by the Site VP (or designee). When this declaration is made, full compliance with 10 CFR 26.205(c) and (d) is again required.

Thus, to summarize, the Entergy exemption request for Waterford 3 can be characterized as having three parts: (1) High-wind exemption encompassing the period starting with the initiating conditions to just prior to declaration of an unusual event, (2) a period defined as immediately following high-wind condition, when an unusual event is not declared, but when a recovery period is still required, and (3) a recovery exemption immediately following an existing 10 CFR 26.207(d) exception as discussed above.

3.0 Discussion

The NRC, pursuant to 10 CFR 26.9, requires that upon application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of the regulations at 10 CFR 26.205(c) and (d), as "it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest."

The NRC staff has reviewed the licensee's request using the regulations contained in 10 CFR 26.205 and 10 CFR 26.207 and related Statements of Consideration in the 10 CFR part 26 Final Rule published in the **Federal Register** on March 31, 2008 (73 FR 17148). Other references include:

- NRC Regulatory Guide 5.73, "Fatigue Management for Nuclear Power Plant Personnel," dated March 2009 (ADAMS Accession No. ML083450028);
- NRC Information Notice 93–53, "Effect of Hurricane Andrew on Turkey Point Nuclear Generating Station and Lessons Learned," dated July 20, 1993 (ADAMS Accession No. ML031070364);
- NRC Information Notice 93–53, Supplement 1, "Effect of Hurricane

Andrew on Turkey Point Nuclear Generating Station and Lessons Learned," dated April 29, 2004 (ADAMS Accession No. ML031070490);

• NUREG–0933, "Resolution of Generic Safety Issues, Section 3, 'New Generic Issues: Issue 178: Effect of Hurricane Andrew on Turkey Point (Revision 2)' "; and

• NUREG–1474, "Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992," produced jointly by the NRC and the Institute of Nuclear Power Operations (non-publicly available).

Based on its review, the NRC staff agrees that preparing the site for the onset of tropical storms and hurricanes, which includes sequestering enough essential personnel to provide for shift relief, is necessary to ensure adequate protection of the plant and personnel safety, would maintain protection of health and safety of the public, would not adversely affect the common defense and security, and is otherwise in the public interest.

Workers covered by the requirement are workers who perform duties identified in 10 CFR 26.4(a)(1) through (a)(5), who are sequestered in the event of severe winds, and who would need to be available to ensure the plant remains in a safe and secure status to protect the public. Those duties are: [(1) Operating or onsite directing of the operation of structures, systems, and components (SSCs) that a risk-informed evaluation process has shown to be significant to public health and safety; (2) performing health physics or chemistry duties required as a member of the onsite emergency response organization's minimum shift complement; (3) performing the duties of a fire brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; (4) performing maintenance or onsite directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety; and (5) performing security duties as an armed security force officer, alarm station operator, response team leader, or watchperson [security personnel].

Pursuant to 10 CFR 26.207(d), licensees need not meet the requirements of Section 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan. A tropical storm watch occurs when sustained winds are at least 39 mph. The entry condition for the Waterford 3 declaration of an Unusual Event is a confirmed hurricane-force wind greater or equal to 74 mph that is expected to arrive on site in less than 12 hours as projected by the National Weather Service. Therefore, entry conditions for the requested exemption precede the declaration of an Unusual Event.

Section 26.207(d) states that licensees need not meet the requirements of 26.205(c) and (d) during declared emergencies, therefore there is no need for an additional exemption to be granted during the period of a declared emergency for severe winds. Although work hours, breaks, and days off are calculated as usual during a licensee-declared plant emergency, licensees are unconstrained in the number of hours they may allow individuals to work performing covered duties or the timing and duration of breaks they must require them to take.

High-Wind Exemption

A high-wind exemption includes the period starting with the entry conditions prior to the declaration of an Unusual Event (confirmed hurricane watch or warning is in effect). As a hurricane approaches landfall, high-wind speeds—in excess of wind speeds that create unsafe travel conditions—are expected. During these times, the National Weather Service typically publishes a projected path of the storm. This condition will be described as the "high-wind condition," or "period of high winds."

The National Hurricane Center defines a hurricane warning as an announcement that hurricane conditions (sustained winds of 74 mph or higher) are expected somewhere within the specified coastal area. Because severe wind preparedness activities become difficult once winds reach tropical storm force, a hurricane warning is issued 36 hours in advance of the anticipated onset of tropical-storm-force winds (39 to 73 mph).

The following are entry conditions where the site may apply a proposed allowance period for exemption from fatigue rule requirements (Entergy Procedure EN–EP–309, "Fatigue Management for Hurricane Response Activities").

(a) The site location is expected to be within a Hurricane Watch or Warning area. OR

(b) The site location is expected to be within an Inland Hurricane Watch or Warning area. OR

(c) Travel conditions are forecasted to be hazardous for employee commutes to and from the site (i.e., sustained wind conditions of greater than 40 mph). OR

(d) Local municipalities are preparing to declare restrictions on travel that would impact employee commutes and/or are preparing to order or recommend evacuations in areas that affect essential staffing levels for the site.

Lessons learned that are included in NUREG–1474, include the acknowledgement that detailed, methodical preparations should be made prior to the onset of hurricane-force winds. The NRC staff concludes that Waterford 3's organized actions are consistent with the lessons learned.

Recovery Exemption Immediately Following a High-Wind Exemption

The period immediately following the high-wind exemption, but when the conditions for an Unusual Event no longer exist, may still require a recovery period. Also, high winds that make travel unsafe but that fall below the threshold of an emergency, could be present for several days. After the high-wind condition has passed, sufficient numbers of personnel may not be able to access the site to relieve the sequestered individuals. An exemption during these conditions is consistent with the intent of the 10 CFR 26.207(d).

Recovery Exemption Immediately Following an Emergency Plan Exemption

Following a declared emergency, under 10 CFR 26.207(d), due to high-wind conditions, the site may not be accessible by sufficient numbers of personnel to allow relief of the sequestered individuals. Once the high-wind conditions have passed and the Unusual Event exited, a recovery period might be necessary. An exemption during these circumstances is consistent with the intent of 10 CFR 26.207(d).

Once Waterford 3 has entered into either the high-wind exemption or the 10 CFR 26.207(d) exemption, the licensee does not need to make a declaration that it is invoking the recovery exemption.

Unit Shutdown

If a hurricane warning is in effect and the storm is projected to reach the site, Waterford 3 specifies that 12 hours prior to arrival of hurricane conditions onsite, as projected by the National Weather Service, Waterford 3 will commence a plant shutdown as directed by plant management in anticipation of a loss of offsite power.

Lessons learned from Hurricane Andrew, NUREG–1474, include having the unit shut down and on decay heat removal when the storm strikes so that a loss of offsite power will not jeopardize core cooling. The NRC staff concludes the Waterford 3 plan is consistent with the lessons learned.

Fatigue Management

Waterford 3 plans to establish a 12-hour duty schedule comprised of a day shift and a night shift. In its letter dated November 3, 2010, the licensee provided a checklist, in procedure ENS–EP–302, Attachment 9.2 which includes "Management Expectations" which incorporates an expectation of responders to sleep when off duty. When personnel are to be sequestered on site, Waterford 3 permits arrangements for onsite reliefs and bunking to be made in order to allow for a sufficient period of restorative sleep for personnel. The relief and bunking areas will be developed prior to sequestering personnel. Sleeping accommodations within a weather protected environment will be made available that will attempt to minimize the interruption of sleep. The licensee has also provided key features of managing fatigue, which highlight sufficient numbers of management and supervision that will be available to provide oversight for plant operating conditions and who are tasked with monitoring the effects of fatigue such that the public health and safety is adequately protected. The NRC staff concludes that the actions presented are consistent with the practice of fatigue management.

Maintenance

In its letter dated November 3, 2010, the licensee clarified that the exemption request will only apply to individuals involved in hurricane response activities that perform duties indentified in 10 CFR 26.4 (1) through (5). The exemption does not apply to discretionary maintenance activities. The exemption is for work necessary to maintain the plant in a safe and secure condition. Suspension of work hour controls is for storm preparation activities and those deemed critical for plant and public safety. The NRC staff concludes that the exclusion of discretionary maintenance from the exemption request to be consistent with the intent of the exemption.

Procedural Guidance

In its letter dated November 29, 2010, the licensee made a commitment to incorporate the following guidance in site procedures:

(1) The conditions necessary to sequester site personnel that are consistent with the conditions specified in the Waterford 3 exemption request (W3F1–2010–0045).

(2) Provisions for ensuring that personnel who are not performing duties are provided an opportunity as well as accommodations for restorative rest.

(3) The condition for departure from the exemption is based on the Site VP's [Vice President's] (or his duly assigned designee's) determination that adequate staffing is available to meet the requirements of 10 CFR 26.205(c) and (d).

Returning to Work Hour Controls

The licensee must return to work hour controls when the Site VP (or designee) determines that sufficient relief crews are available to restore normal shift rotation.

Waterford 3 utilizes staffing rosters tied to a departmental or organizational function, known as watch bills, to monitor compliance with the fatigue rule requirements. Capability to restore normal shift rotation would be ascertained via restoration of the watch bill process. Upon exiting the exemption, the work hour controls in Section 26.205(c) and (d) apply and the requirements in Section 26.205(3)(b) must be met.

Authorized by Law

As stated above, this exemption would apply to the storm crew sequestered on site. The licensee's request states that adherence to all work hour controls could impede the licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status. As stated above, 10 CFR 26.9 allows the NRC to grant exemptions from the requirements of 10 CFR 26.205(c) and (d). The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 26.205(c) and (d) are to prevent impairment from fatigue due to duration, frequency, or sequencing of successive shifts. Based on the above evaluation, no new accident precursors are created by utilizing whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status; therefore, the probability of postulated accidents is not increased. Also, the consequences of postulated accidents are not increased, because there is no change in the types of accidents previously evaluated. 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 utilize whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Otherwise in the Public Interest

The proposed exemption would increase the availability of licensee staff to perform additional duties to ensure that the plant is in a safe configuration during weather-related emergencies. Therefore, granting this exemption is in the public interest.

4.0 Conclusion

Accordingly, the Commission concludes that granting the requested exemption is consistent with existing regulation at 10 CFR 26.207(d), "Plant emergencies," which allows the licensee to not meet the requirements of 10 CFR 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan. The 10 CFR part 26 Statements of Consideration (73 FR 17148; March 31, 2008), state that "Plant emergencies are extraordinary circumstances that may be most effectively addressed through staff augmentation that can only be practically achieved through the use of work hours in excess of the limits of § 26.205(c) and (d)." The objective of the exemption is to ensure that the control of work hours do not impede a licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status.

The actions described in the exemption request and submitted procedures are consistent with the recommendations in NUREG–1474, "Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992." Also consistent with NUREG–1474, NRC staff expects the licensee would have completed a reasonable amount of hurricane preparation prior to the need to sequester personnel, in order to minimize personnel exposure to high winds.

The NRC staff has reviewed the exemption request from certain work hour controls during conditions of high winds and recovery from high-wind conditions. Based on the considerations

discussed above, the NRC staff has determined that (1) The proposed exemption is authorized by law, (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed exemption, (3) such activities will be consistent with the Commission's regulations and guidance, and (4) the issuance of the exemption will not endanger the common defense and security or the health and safety of the public.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (76 FR 5408; January 31, 2011).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of February 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–4985 Filed 3–3–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2011–0051]

Exelon Generation Company, LLC Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Exelon Generation Company, LLC (Exelon, or the licensee) to withdraw its February 22, 2010 application for proposed amendment to Facility Operating License No. NPF–11 and Facility Operating License No. NPF–18 for LaSalle County Station, Units 1 and 2, respectively, in LaSalle County, Illinois.

The proposed amendment would have relocated selected Surveillance Requirement frequencies from the LaSalle County Station Units 1 and 2 Technical Specifications (TSs) to a licensee-controlled program. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 20, 2010 (75 FR 20637). However, by letter dated February 22, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 22, 2010, and the licensee's letter dated February 22, 2011, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of February 2011.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–4982 Filed 3–3–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461; NRC–2011–0050]

Clinton Power Station Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Exelon Generation Company, LLC, to withdraw its March 3, 2010 application for proposed amendment to Facility Operating License No. NPF–62 for the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

The proposed amendment would have revised the Technical Specifications 3.1.7, to extend the completion time for Condition B (i.e., two standby liquid control subsystems inoperable) from 8 hours to 72 hours.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 4, 2010, 75 FR 23814. However, by letter dated February 22, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 3, 2010, and the licensee's letter dated February 22, 2011, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of February 2011.

For the Nuclear Regulatory Commission.

Nicholas J. DiFrancesco,

Project Manager, Plant Licensing Branch 3–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–4984 Filed 3–3–11; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Pension Benefit Guaranty Corporation ("PBGC" or "the Agency") has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted April 4, 2011.

ADDRESSES: Written comments may be submitted to the Office of Information and Regulatory Affairs, Office of

Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974. A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel, 1200 K St., NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The request is also available at *http://www.reginfo.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, or Catherine B. Klion, Manager, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

PBGC received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide PBGC's projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 8.

Respondents: 200.

Annual Responses: 1,600.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 800.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Issued in Washington, DC, this 28th day of February 2011.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–4851 Filed 3–3–11; 8:45 am]

BILLING CODE 7709–01–P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 2,500,000.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2011–23 and CP2011–62; Order No. 683]

New Postal Product and New Price Category

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Competitive Ancillary Services to the competitive product list. The Postal Service also states that it has established a new price category under that product.

DATES: *Supplemental information (from Postal Service) due:* March 4, 2011. *Public comments due:* March 10, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On February 24, 2011, the Postal Service filed a request with the Commission to add a new product to the competitive product list and concurrently establish a new price category under that product pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*[1]

The new product, Competitive Ancillary Services, is proposed as a shell product under which various competitive ancillary service price categories will be placed. Adult Signature Service is the first price category proposed by the Postal Service to be placed within the Competitive Ancillary Services product. Additional price categories are anticipated in the future.

Adult Signature Service will require verification of age of the intended mail recipient at the time of delivery. An adult over the age of 21 must show photo identification and sign for the package. The Postal Service proposes

[1] Request of the United States Postal Service to Establish New Competitive Ancillary Services Product and Notice of Price and Classification Changes for Adult Signature Service, February 24, 2011 (Request).

two variations of the service. Adult Signature Required, available for $4.75, will require the signature of anyone 21 years of age or older at the recipient address. Adult Signature Restricted Delivery, available for $4.95, will require the signature of the addressee only, who must be 21 years of age or older at the designated address. Adult Signature Service will be available with Express Mail, Priority Mail and Parcel Select for commercial and online customers only.

The Postal Service includes the following attachments with its Request:

- Attachment A—Decision of the Governors of the United States Postal Service on Establishment of Rate and Class of General Applicability for Competitive Ancillary Services Product (Governors' Decision No. 11–1) and Certification of Governors' Vote in Governors' Decision No. 11–1;
- Attachment B—Statement of Supporting Justification; and
- Attachment C—Mail Classification Schedule (MCS) Language.

The Commission establishes Docket Nos. MC2011–23 and CP2011–62 to consider the Postal Service's proposals described within its Request.

Interested persons may submit comments on whether the Postal Service's filing in the captioned dockets is consistent with the policies of 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and the general provisions of title 39. Comments are due no later than March 10, 2011. The Postal Service's filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Jeremy Simmons to serve as Public Representative in the captioned proceedings.

Commission request for additional information. The Postal Service is requested to provide written responses to the questions below in support of its Request. *See* 39 3015.6. The responses are due no later than March 4, 2011.

The Analysis of Competitive Ancillary Services Product with Price Category for Adult Signature Service attached to Governors' Decision No. 11–1 indicates that the total revenue potential of Adult Signature Service is estimated at nearly $12.3 million and new package revenues are estimated at $7.7 million. This attachment also states that the fully allocated cost coverage for Adult Signature Service is estimated to be 135 percent, and that the attributable cost coverage is estimated to be 228 percent.

1. Please explain how the estimated revenue for Adult Signature Service and "new package revenues" were derived, including all underlying calculations and assumptions.

2. Please provide the underlying worksheets that support the cost coverage figures of 135 percent and 228 percent.

It is ordered:

1. The Commission establishes Docket Nos. MC2011–23 and CP2011–62 for consideration of matters raised by the Postal Service's Request.

2. Comments by interested persons in these proceedings are due no later than March 10, 2011.

3. Pursuant to 39 U.S.C. 505, Jeremy Simmons is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. Responses to the request for supplemental information are due from the Postal Service on March 4, 2011.

5. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–4947 Filed 3–3–11; 8:45 am]

BILLING CODE 7710–FW–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:

Form S–3, OMB Control No. 3235–0073, SEC File No. 270–61.

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 requests for extension of the previously approved collections of information discussed below.

Form S–3 (17 CFR 239.13) is used by issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form S–3 provides investors with material information to make investment decisions regarding securities offered to the public. Form S–3 takes approximately 459 hours per response and is filed by approximately 2,065 issuers annually. We estimate that 25% of the 459 hours per response (114.75 hours) is prepared by the issuer for a total annual reporting burden of 236,959 hours (114.75 hours per response × 2.065 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 1, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4883 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29589]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 25, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February 2011. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 22, 2011, and should be accompanied by proof of service on the 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 Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Cohen & Steers Advantage Income Realty Fund, Inc. [File No. 811–9993]

Cohen & Steers Premium Income Realty Fund, Inc. [File No. 811–21074]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. By July 24, 2009, each applicant had redeemed all of its outstanding preferred shares. On December 18, 2009, each applicant transferred its assets to Cohen & Steers Quality Income Realty Fund, Inc., based on net asset value. Expenses of $232,022 and $255,944, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Dates: The applications were filed on January 19, 2011 and amended on February 14, 2011.

Applicants' Address: 280 Park Ave., 10th Floor, New York, NY 10017.

Cohen & Steers Worldwide Realty Income Fund, Inc. [File No. 811–21595]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. By July 24, 2009, applicant had redeemed all of its outstanding preferred shares. On March 12, 2010, applicant transferred its assets to Cohen & Steers Quality Income Realty Fund, Inc., based on net asset value. Expenses of $211,241 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on January 19, 2011 and amended on February 14, 2011.

Applicant's Address: 280 Park Ave., 10th Floor, New York, NY 10017.

Cohen & Steers REIT and Utility Income Fund, Inc. [File No. 811–21437]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. By July 24, 2009, applicant had redeemed all of its outstanding preferred shares. On March 12, 2010, applicant transferred its assets to Cohen & Steers Infrastructure Fund, Inc., based on net asset value. Expenses of $475,015 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on January 19, 2011 and amended on February 14, 2011 and February 18, 2011.

Applicant's Address: 280 Park Ave., 10th Floor, New York, NY 10017.

PowerShares ACCE Global Listed Private Equity Fund [File No. 811–21709]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on February 3, 2011.

Applicant's Address: 301 West Roosevelt Rd., Wheaton, IL 60187.

DWS Enhanced Commodity Strategy Fund, Inc. [File No. 811–21600]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 23, 2010, applicant transferred its assets to DWS Enhanced Commodity Strategy Fund, a series of DWS Institutional Funds, based on net asset value. Expenses of $527,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on January 27, 2011.

Applicant's Address: 345 Park Ave., New York, NY 10154.

Defenders Multi-Strategy Hedge Fund, LLC [File No. 811–21247]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 30, 2010, applicant transferred its assets, based on net asset value, to a Delaware statutory trust formed pursuant to a trust agreement with Ivy Asset Management LLC, applicant's investment adviser ("Liquidating Trust"). Each shareholder of applicant received a pro rata beneficial interest in the Liquidating Trust based on the percentage of applicant's units owned by such shareholder as of September 30, 2010. The Liquidating Trust will liquidate its assets and periodically distribute the proceeds to the holders of beneficial interest of the Trust. Expenses of $293,000 incurred in connection with the liquidation were paid by Ivy Asset Management LLC.

Filing Dates: The application was filed on October 12, 2010, and amended on January 20, 2011 and February 7, 2011.

Applicant's Address: 144 Glenn Curtiss Blvd., 7th Floor, Uniondale, NY 11556.

Stock Car Stocks Mutual Fund, Inc. [File No. 811–8791]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 1, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $49,148 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on February 3, 2011, and amended on February 22, 2011.

Applicant's Address: 300 S. Orange Ave., Suite 1100, Orlando, FL 32801.

Jefferson National Life Annuity Account H [811–9693]

Jefferson National Life Annuity Account I [811–10213]

Jefferson National Life Annuity Account J [811–21498]

Jefferson National Life Annuity Account K [811–21500]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. The board of directors of the applicants' depositor, Jefferson National Life Insurance Company, approved the merger of each applicant into Jefferson National Life Annuity Account E on September 16, 2010. The mergers were effected on November 19, 2010. The depositor bore all expenses relating to the mergers.

Filing Date: The applications were filed on December 9, 2010.

Applicants' Address: 9920 Corporate Campus Drive, Suite 1000, Louisville, Kentucky 40223.

Conseco Variable Insurance—Separate Account L [811–10271]

Jefferson National Life Advisor Variable Annuity Account [811–7615]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. The board of directors of the applicants' depositor, Jefferson National Life Insurance Company, approved the merger of each applicant into Jefferson National Life Annuity Account E on September 16, 2010. The mergers were effected on November 19, 2010. The depositor bore all expenses relating to the mergers.

Filing Dates: The applications were filed on December 9, 2010, and amended on February 11, 2011.

Applicants' Address: 9920 Corporate Campus Drive, Suite 1000, Louisville, Kentucky 40223.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–4861 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Advanced Optics Electronics, Inc.; Order of Suspension of Trading

March 2, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced Optics Electronics, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in Advanced Optics Electronics, Inc. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on March 2, 2011, through 11:59 p.m. EDT on March 15, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–5038 Filed 3–2–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63986; File No. SR–FICC–2010–09]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Introduce Cross-Margining of Certain Positions Cleared at the Fixed Income Clearing Corporation and Certain Positions Cleared at New York Portfolio Clearing, LLC

February 28, 2011.

I. Introduction

On November 12, 2010, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–FICC–2010–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act").[1] Notice of the proposed rule change was published in the **Federal Register** on November 30, 2010.[2] The Commission initially received thirteen comments to the proposed rule change.[3] FICC, as well as one of the commenters, submitted letters responding to the comments.[4] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change allows FICC to offer cross-margining of certain positions cleared at its Government Securities Division ("GSD") and certain positions cleared at New York Portfolio Clearing, LLC ("NYPC").[5] GSD members will be able to combine their positions at GSD with their positions at NYPC, or those positions of certain permitted affiliates cleared at NYPC, within a single margin portfolio ("Margin Portfolio"). The proposed rule change also makes certain other related changes to GSD's rules.

A. Cross-Margining With NYPC

Under the proposed rule, a member of FICC that is also an NYPC clearing member ("Joint Clearing Member") could in accordance with the provisions of the GSD and NYPC Rules, elect to participate in the cross-margining arrangement. FICC's rules permit a GSD netting member that is a member (or that has an affiliate that is a member) of one or more Futures Clearing Organizations ("FCO"),[6] such as NYPC, to become a cross-margining participant in a cross-margining arrangement between FICC and one or more FCOs with the consent of FICC and each such FCO. A netting member shall become a cross-margining participant upon acceptance of FICC and each applicable FCO of an agreement executed by such cross-margining participant in the form specified in the applicable cross-margining agreement.[7]

Participating in the cross-margining arrangement would permit a Joint Clearing Member to have its margin requirement calculated taking into account both its positions at FICC and NYPC, which should provide a clearer picture of its risk exposure and generally facilitate better risk assessment by FICC. Specifically, each Joint Clearing Member would have its margin requirement with respect to Eligible Positions (*i.e.,* positions in certain securities netted by FICC or certain futures contracts cleared by an FCO)[8] in its proprietary account at

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

[2] Securities Exchange Act Release No. 63361 (November 23, 2010), 75 FR 74110 (November 30, 2010) (FICC–2010–09). In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements are incorporated into the discussion of the proposed rule change in Section II below.

[3] Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010); Letter from Douglas Engmann, President, Engmann Options, Inc. (December 6, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); Letter from John C. Hiatt, Chief Administrative Officer, Ronin Capital (December 10, 2010); Letter from Richard D. Marshall, Ropes & Gray on behalf of ELX Futures, LP (December 15, 2010); Letter from John Willian, Managing Director, Goldman Sachs (December 17, 2010); Letter from James B. Fuqua and David Kelly, Managing Directors, Legal, UBS Securities, LLC (December 20, 2010); Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010); Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010); Letter from Gary DeWaal, Senior Managing Director and Group General Counsel, Newedge USA, LLC (December 21, 2010); Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel, LLC (December 21, 2010); Letter from William H. Navin, Executive Vice President and General Counsel, The Options Clearing Corporation (December 21, 2010); and Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX (December 21, 2010).

[4] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011); Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011); Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011); and Letter from Alex Kogan, Vice President and Deputy General Counsel, NASDAQ OMX (January 10, 2011).

[5] NYPC is jointly owned by NYSE Euronext and The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the parent company of FICC. On January 31, 2011, the Commodity Futures Trading Commission ("CFTC") approved NYPC's registration as a derivatives clearing organization ("DCO") pursuant to Section 5b of the Commodity Exchange Act and Part 39 of the Regulations of the CFTC.

[6] "FCO" is defined in GSD Rule 1 as a clearing organization for a board of trade designated as a contract market under Section 5 of the Commodity Exchange Act that has entered into a Cross-Margining Agreement with FICC.

[7] *See* GSD Rule 43, Cross-Margining Arrangements, Section 2. The cross-margining agreement between FICC and NYPC as well as the cross-margining participant agreements for joint and permitted affiliates are attached to FICC's filing of proposed rule change SR–FICC–2010–09.

[8] The term "Eligible Position" is currently defined in GSD's rules as a position in certain Eligible Netting Securities netted by FICC, or certain Government securities futures contracts or interest rate futures contracts cleared by a FCO as identified in a Cross-Margining Agreement as eligible for cross-margining treatment.

"Eligible Netting Security" is defined in GSD Rule 1 as an Eligible Security that FICC has designed as eligible for netting.

"Eligible Security" is defined generally in GSD Rule 1 as a security issued or guaranteed by the

NYPC and its margin requirement with respect to Eligible Positions at FICC calculated as a single portfolio, which would factor in the net risk of such Eligible Positions at both clearing organizations. In addition, an affiliate of a member of FICC that is also a clearing member of NYPC ("Permitted Margin Affiliate") [9] could similarly elect to participate in the cross-margining arrangement and have its margin requirement with respect to Eligible Positions in its proprietary account at NYPC calculated as a single portfolio with the Eligible Positions of the FICC member.

The proposed rule allows (i) Joint Clearing Members and (ii) members of FICC and their Permitted Margin Affiliates to have their margin requirements for positions at FICC and NYPC determined as a single portfolio, with FICC and NYPC each having a security interest in such members' and Permitted Margin Affiliates' margin deposits and other collateral to secure their obligations to FICC and NYPC.

The following types of FICC members will not be eligible to participate in the cross-margining arrangement ("NYPC Arrangement"), in order to allow FICC to maintain segregation of certain business or member types that are treated differently for purposes of loss allocation: (i) GSD Sponsored Members,[10] (ii) Inter-Dealer Broker Netting Members,[11] and (iii) Dealer Netting Members [12] with respect to their segregated brokered accounts. In addition, in order for a Bank Netting Member [13] to combine its accounts into a Margin Portfolio with any other accounts, it will have to demonstrate to the satisfaction of FICC and NYPC that doing so will comply with the regulatory requirements applicable to the Bank Netting Member (*e.g.,* by providing an opinion of counsel or otherwise outlining compliance with relevant statutory provisions).[14]

In order to distinguish the NYPC Arrangement from an existing cross-margining arrangement between the Chicago Mercantile Exchange ("CME") and FICC ("CME Arrangement"), the proposed rule amends the definition of "Cross-Margining Agreement" in the GSD rules to mean an agreement entered into between FICC and one or more FCOs pursuant to which a Cross-Margining Participant,[15] in accordance with the provisions of the GSD Rules and otherwise at the discretion of FICC, could elect to have its Required Fund Deposit [16] with respect to Eligible Positions at FICC, and its (or its Permitted Margin Affiliates' Required Fund Deposit, if applicable) margin requirements with respect to Eligible Positions at such FCO(s), calculated either (i) by taking into consideration the net risk of such Eligible Positions at each of the clearing organizations or (ii) as if such positions were in a single portfolio. The CME Arrangement falls into clause (i) of the definition, whereas the NYPC Arrangement will fall into clause (ii). Conforming changes will be made to GSD Rule 1, Definitions, relating to cross-margining. GSD Rule 43, Cross-Margining Arrangements, also will be amended to add provisions regarding single-portfolio margining (*i.e.,* the proposed NYPC Arrangement). To implement this proposal, FICC and NYPC will enter into a cross-margining agreement ("NYPC Agreement"). The NYPC Agreement was filed with the Commission as part of proposed rule change SR–FICC–2010–09 and will be appended to the GSD Rules and made a part thereof.

Pursuant to the NYPC Agreement, and consistent with previous approvals of cross-margining arrangements involving DCOs,[17] cross-margining with certain NYPC positions will be limited to positions carried in proprietary accounts of clearing members of NYPC. Customers of NYPC clearing members will not be permitted to participate in the NYPC Arrangement, as their participation would require the resolution of additional issues associated with fund segregation and operations. Neither FICC nor NYPC rules require their members to participate in the NYPC Arrangement, and any such participation by FICC and NYPC members will be voluntary. Joint Clearing Members and members of FICC and their Permitted Margin Affiliates will be required to execute the requisite cross-margining participant agreements.[18]

FICC will be responsible for performing the margin calculations in its capacity as the Administrator under the terms of the NYPC Agreement. Specifically, FICC will determine the combined FICC clearing fund and NYPC original margin requirement for each participant.[19] FICC will calculate those requirements using a Value-at-Risk ("VaR") methodology, with a 99-percent confidence level and a 3-day liquidation period for cash positions and a 1-day liquidation period for futures positions. In addition, each cross-margining participant's "one-pot" margin requirement will be subject to a daily

United States, a U.S. government agency or instrumentality, a U.S. government-sponsored corporation, or any other security approved by FICC's board of directors from time to time, or one or more categories of such securities as represented by a generic CUSIP number, that FICC has listed on the Eligible Securities master file maintained by it pursuant to GSD Rule 30.

[9] The term "Permitted Margin Affiliate" is being added to GSD Rule 1 and is defined as an affiliate of a Member that is (i) also a member of GSD, and/or (ii) a member of an FCO with which FICC has entered into a Cross-Margining Agreement that provides for margining of positions between FICC and the FCO as if such positions were in a single portfolio and that directly or indirectly controls such particular member, or that is directly or indirectly controlled by or under common control with such particular member. Ownership of more than 50% of the common stock of the relevant entity (or equivalent equity interests in the case of a form of entity that does not issue common stock) will be conclusive evidence of prima facie control of such entity for purposes of this definition.

[10] A "Sponsored Member" of GSD is any person that has been approved by FICC to be sponsored into membership by a "Sponsoring Member" pursuant to GSD Rule 3A. A "Sponsoring Member" is a member of GSD's comparison and netting system whose application to become a sponsoring member has been approved by the FICC's board of directors pursuant to GSD Rule 3A. *See* GSD Rule 1, Definitions.

[11] The definition of "Inter-Dealer Broker Netting Member," as revised by the proposed rule change, is an inter-dealer broker admitted to membership in GSD's netting system. *See* GSD Rule 2A, Initial Membership Requirements.

[12] The definition of a "Dealer Netting Member," as revised by the proposed rule change, is a registered government securities dealer admitted to membership in GSD's netting system. *See* GSD Rule 2A, Initial Membership Requirements.

[13] Under GSD Rule 2A, a person shall be eligible to apply to become a "Bank Netting Member" of GSD if it is a bank or trust company chartered as such under the laws of the United States, or a State thereof, or is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction, and participates in FICC through its U.S. branch or agency. A bank or trust company that is admitted to membership in GSD's netting system, the netting system, pursuant to these Rules, and whose membership in the netting system has not been terminated, shall be a Bank Netting Member. *See* GSD Rule 2A, Initial Membership Requirements, Section 2.

[14] *See* GSD Rule 4, Clearing Fund and Loss Allocation, Section 1a as proposed to be amended by the proposed rule change.

[15] The term "Cross-Margining Participant" is defined in GSD Rule 1 as a Netting Member that is authorized by FICC to participate in the Cross-Margining Arrangement between FICC and one or more FCOs pursuant to a Cross-Margining Agreement. GSD Rule 1 defines the term "Cross-Margining Arrangement" as the arrangement established between FICC and one or more FCOs pursuant to Cross-Margining Agreements and GSD Rule 43.

[16] The definition of "Required Fund Deposit," as revised by the proposed rule change, is the amount that a Netting Member is required by a GSD rule to contribute to GSD's clearing fund. *See* GSD Rule 1, Definitions.

[17] *See, e.g.,* Securities Exchange Act Release No. 44301 (May 11, 2001), 66 FR 28207 (approving a proposed rule change establishing cross-margining between FICC and CME) and Securities Exchange Act Release No. 27296 (September 26, 1989), 54 FR 41195 (approving a proposed rule change establishing cross-margining between The Options Clearing Corporation and the CME).

[18] The NYPC Agreement and the cross-margining participant agreements for Joint Members and Permitted Affiliates were filed with the Commission as part of the proposed rule change.

[19] Original margin is the NYPC equivalent of the FICC clearing fund.

back test, and a supplemental risk-related charge referred to as a coverage component that will be applied to the participant in the event that the back test reflects insufficient coverage. The "one-pot" margin requirement for each participant would then be allocated between FICC and NYPC in proportion to the clearing organizations' respective "stand-alone" margin requirements—in other words, an amount reflecting the ratio of what each clearing organization would have required from that participant if it was not participating in the cross-margining program ("Constituent Margin Ratio"). The NYPC Agreement provides that either FICC or NYPC can, at any time, require additional margin to be deposited by a Cross-Margining Participant above what is calculated under the NYPC Agreement based upon the financial condition of the participant, unusual market conditions, or other special circumstances (*e.g.,* in the event of regulatory or criminal proceedings). The standards that FICC proposes to use for these purposes are the standards currently contained in the GSD rules, so that notwithstanding the calculation of a Cross-Margin Participant's clearing fund requirement pursuant to the NYPC Agreement, FICC will retain its rights under the GSD rules to charge additional clearing fund contributions under the circumstances specified in the GSD rules. For example, the GSD rules provide that if a Dealer Netting Member falls below its minimum financial requirement, it shall be required to make additional clearing fund contributions equal to the greater of (i) $1 million or (ii) 25 percent of its Required Fund Deposit.

FICC will utilize the same VaR methodology for calculating margin for futures and cash positions. Under this method, the prior 250 days of historical information for futures positions and the prior 252 days of historical information for cash positions, including prices, spreads and market variables such as Treasury zero-coupon yields and London Interbank Offered Rate curves, are used to simulate the market environments in the forthcoming 1 day for futures positions and the forthcoming 3 days for cash positions. Projected portfolio profits and losses are calculated assuming these simulated environments will actually be realized. These simulations will be used to calculate VaR. Historical simulation is a continuation of the FICC margin methodology.

With respect to the confidence level, FICC currently utilizes extreme value theory [20] to determine the 99th percentile of loss distribution. Upon implementation of the NYPC Arrangement, FICC will utilize a front-weighting mechanism to determine the 99th percentile of loss distribution. This front-weighting mechanism will place more emphasis on more recent observations. Additionally, FICC's VaR methodology will be enhanced to accommodate more securities; as a result, certain CUSIPs, which are now considered to be "non-priceable" (because, for example, of a lack of historical information regarding the security) and subject to a "haircut" requirement (*i.e.,* fixed percentage charge) where offsets are not permitted, will be treated as "priceable" and therefore included in the core VaR calculation.

Based on preliminary analyses, FICC expects that the FICC VaR component of the clearing fund requirement may be reduced by as much as approximately 20 percent for common FICC–NYPC members as a result of the NYPC Arrangement. In order to help ensure that this reduction in clearing fund is appropriately correlated to more precise assessment of exposures associated with considering offsetting positions and will not result in increased risks to the clearing agency, FICC has performed back testing analysis to verify that there will be sufficient coverage after the FICC–NYPC cross-margining reductions are applied.

In the event of the insolvency or default of a member that participates in the NYPC Arrangement, the positions in such participant's "one-pot" portfolio, including, where applicable, the positions of its Permitted Margin Affiliate at NYPC, will be liquidated by FICC and NYPC as a single portfolio and the liquidation proceeds will be applied to the defaulting participant's obligations to FICC and NYPC in accordance with the provisions of the NYPC Agreement.

The NYPC Agreement provides for the sharing of losses by FICC and NYPC in the event that the "one-pot" portfolio margin deposits of a defaulting participant are not sufficient to cover the losses resulting from the liquidation of that participant's trades and positions. This loss-sharing arrangement can be summarized as follows:

- If either clearing organization had a net loss ("worse-off party"), and the other had a net gain ("better-off party") that is equal to or exceeds the worse-off party's net loss, then the better-off party pays the worse-off party the amount of the latter's net loss. In this scenario, one clearing organization's gain will extinguish the entire loss of the other clearing organization.
- If either clearing organization had a net loss ("worse-off party") and the other clearing organization had a net gain ("better-off party") that is less than or equal to the worse-off party's net loss, then the better-off party will pay the worse-off party an amount equal to the net gain. Thereafter, if such payment did not extinguish the net loss of the worse-off party, the better-off party will pay the worse-off party an amount equal to the lesser of: (i) The amount necessary to ensure that the net loss of each clearing organization is in proportion to the Constituent Margin Ratio or (ii) the better-off party's "Maximum Transfer Payment" less the better-off party's net gain. The "Maximum Transfer Payment" will be defined with respect to each clearing organization to mean an amount equal to the product of (i) the sum of the aggregate margin reductions of the clearing organizations and (ii) the other clearing organization's Constituent Margin Ratio—in other words, the amount by which the other clearing organization reduced its margin requirements in reliance on the cross-margining arrangement. In this scenario, one clearing organization's gain does not completely extinguish the entire loss of the other clearing organization, and the better-off party will be required to make an additional payment to the worse-off party. This potential additional payment will be capped as described in this paragraph.
- If either clearing organization had a net loss, and the other had the same net loss, a smaller net loss, or no net loss, then:
  - In the event that the net losses of the clearing organizations were in proportion to the Constituent Margin Ratio, no payment will be made.
  - In the event that the net losses of the clearing organizations were not in proportion to the Constituent Margin Ratio, then the clearing organization that had a net loss which was less than its proportionate share of the total net losses incurred by the clearing organizations ("better-off party") will pay the other clearing organization ("worse-off party") an amount equal to the lesser of: (i) The better-off party's Maximum Transfer Payment or (ii) the amount necessary to ensure that the clearing organizations' respective net losses were allocated between them in proportion to the Constituent Margin Ratio.

[20] Extreme value theory is used to analyze outcomes beyond the 99 percent confidence interval used for VaR and provides an assessment of the size of these events.

• If FICC had a net gain after making a payment as described above, FICC will pay to NYPC the amount of any deficiency in the defaulting member's customer segregated funds accounts or, if applicable, such defaulting member's Permitted Margin Affiliate held at NYPC up to the amount of FICC's net gain.

• If FICC received a payment under the Netting Contract and Limited Cross-Guaranty ("Cross-Guaranty Agreement") [21] to which it is a party (*i.e.,* because FICC had a net loss), and NYPC had a net loss, FICC will share the cross-guaranty payment with NYPC pro rata, where such pro rata share is determined by comparing the ratio of NYPC's net loss to the sum of FICC's and NYPC's net losses. This allocation is appropriate because the "one-pot" combines FICC and NYPC proprietary positions into a unified portfolio that will be margined and liquidated as a single unit. FICC will no longer need to share the cross-guaranty payments with NYPC once NYPC becomes a party to the Cross-Guaranty Agreement.

The GSD rules will further provide that FICC will offset its liquidation results in the event of a close out of the positions of a Cross-Margining Participant in the NYPC Agreement first with NYPC because the liquidation will essentially be of a single Margin Portfolio and then will present its results for purposes of the multilateral Cross-Guaranty Agreement.

B. Access to NYPC Arrangement

FICC has represented that the NYPC Arrangement has been structured in a way that access to, and the benefits of, the "one-pot" are provided to other futures exchanges and DCOs on fair and reasonable terms as described below. The proposed "one-pot" cross-margining method is expected to allow members to post margin that should more accurately reflect the net risk of their aggregate positions across asset classes, thereby releasing excess capital into the economy for more efficient use. By linking positions in fixed income securities held at FICC with interest rate products traded on NYSE Liffe U.S. and other designated contract markets ("DCMs"), the NYPC Arrangement has the potential to create a substantial pool of highly correlated assets that are capable of being cross-margined. This pool will deepen as more DCOs and DCMs join NYPC, creating the potential for even greater margin and risk offsets.

The proposed "one-pot" is required to be accessed by other futures exchanges and DCOs via NYPC.[22] FICC stated that this is done to ensure the uniformity and consistency of risk methodologies and risk management, to simplify and standardize operational requirements for new participants and to maximize the effectiveness of the one-pot arrangement.

FICC stated that NYPC will initially clear certain contracts transacted on NYSE Liffe U.S. and that NYPC will clear for additional DCMs that seek to clear through NYPC as soon as it is feasible for NYPC do so. Such additional DCMs will be treated in the same way as NYSE Liffe US, *i.e.,* they must: (i) Be eligible under the rules of NYPC, (ii) contribute to NYPC's guaranty fund, (iii) demonstrate that they have the operational and technical ability to clear through NYPC, and (iv) enter into a clearing services agreement with NYPC.

Moreover, NYPC has also committed to admit other DCOs as limited purpose participants as soon as it is feasible, thereby allowing such DCOs to participate in the one-pot margining arrangement with FICC through their limited purpose membership in NYPC.[23] Such DCOs will be required to satisfy pre-defined, objective criteria set forth in NYPC's rules.[24] In particular, such DCOs must: (i) Submit trades subject to the limited purpose participant agreement between NYPC and each DCO that would otherwise be cleared by the DCO to NYPC, with NYPC acting as central counterparty and DCO with respect to such trades,[25] (ii) be eligible under the rules of NYPC and agree to be bound by the NYPC rules,[26] (iii) contribute to NYPC's guaranty fund,[27] (iv) provide clearing services to unaffiliated markets on a "horizontal" basis (*i.e.,* not limit their provision of clearing services on a vertical basis to a single market or limited number of markets),[28] and (v) agree to participate using the uniform risk methodology and risk management policies, systems and procedures that have been adopted by FICC and NYPC for implementation and administration of the NYPC Arrangement.[29] Reasonable clearing fees will be allocated between NYPC and the limited purpose participant DCO as may be agreed by NYPC and the DCO, taking into account factors such as the cost of services (including capital expenditures incurred by NYPC), technology that may be contributed by the limited purpose participant, the volume of transactions, and such other factors as may be relevant.

FICC and NYPC anticipate that the limited purpose participant agreement will encompass the foregoing requirements for limited purpose membership contained in NYPC's rules. Because each DCO could present different operational issues, terms beyond the basic rules provisions will be discussed on a case-by-case basis and reflected in the respective limited purpose participant agreement accordingly. FICC and NYPC envision that a possible structure for DCO limited purpose participation could be an omnibus account, with the DCO limited purpose participant essentially acting as

[21] FICC's predecessors, the Government Securities Clearing Corporation ("GSCC") and the MBS Clearing Corporation ("MBSCC"), filed rule filings in 2001 to enter into the Cross-Guaranty Agreement with The Depository Trust Company, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, and The Options Clearing Corporation. Securities Exchange Act Release No. 45868 (May 2, 2002), 67 FR 31394. Under the agreement, if the assets of a defaulting member at one clearing agency exceed its liabilities to that clearing agency, those excess assets may be made available to satisfy the liabilities of that defaulting common member to another clearing agency.

[22] Section 16 of the NYPC Agreement provides that FICC covenants and agrees that, during the term of the NYPC Agreement: (i) NYPC-cleared contracts shall have priority for margin offset purposes over any other cross-margining agreement; (ii) FICC will not enter into any other cross-margining agreement if such agreement would adversely affect the priority of NYPC and FICC under the NYPC Agreement with respect to available assets; and (iii) FICC will not, without the prior written consent of NYPC, amend the CME Agreement, if such further amendment would adversely affect NYPC's right to cross-margin positions in eligible products prior to any cross-margining of CME positions with FICC-cleared contracts or adversely affect the priority of NYPC and FICC under the NYPC Agreement with respect to available assets.

[23] *See* NYPC Agreement, Section 14.

[24] NYPC's rules can be viewed as part of NYPC's DCO registration application on the CFTC's Web site (*http://.www.cftc.gov*), as well as on NYPC's Web site (*http://www.nypclear.com*).

[25] *See* NYPC Rule 801(b)(1).

[26] *See* NYPC Rule 801(b)(2).

[27] The NYPC Agreement provides that except as otherwise provided in a limited purpose participant agreement, a limited purpose participant shall make a contribution to the NYPC Guaranty Fund in form and substance similar to and in an amount that is no less than the amount of the NYSE Guaranty, which will initially consist of a $50,000,000 guaranty secured by $25,000,000 in cash during the first year of NYPC's operations. FICC and NYPC have subsequently clarified and affirmatively represented that the limited purpose participant agreements will be individually negotiated and that "the Guaranty Fund contribution that will be required by NYPC from any Limited Purpose Participant will be determined by risk-based factors without regard to whether such contribution amount is more or less than the amount contributed to the NYPC Guaranty Fund by NYSE Euronext." *See* Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011). *See also* Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

[28] *See* NYPC Rule 801(c)(1)(i).

[29] *See* NYPC Rule 801(c)(1)(ii).

a processing agent for its clearing members vis-a-vis NYPC with respect to the submission of eligible positions of the DCO's clearing members to NYPC for purposes of inclusion in the one-pot arrangement with FICC. In order for their eligible positions to be included in the "one-pot," clearing members of the DCO limited purpose participant would be required to authorize the DCO to submit their positions to NYPC. Under such a structure, the DCO would be responsible for fulfilling all margin and guaranty fund requirements associated with the activity in the omnibus account.

With respect to both the clearance of trades for unaffiliated DCMs and the admission of DCOs as limited purpose participants, FICC has indicated that NYPC has committed that it will complete the process to allow one or more DCMs or DCOs to be admitted and integrated into the "one-pot" cross-margining arrangement as soon as feasible, but no later than 24 months from the start of operations. FICC has represented that this provision is necessary to the effective implementation of the one-pot cross-margining methodology and that this window of time is required to allow for refinement and enhancement of certain systems after operations commence, to allow time for the possible simultaneous integration with multiple major clearing members so that fair market access is assured, and to allow time for the completion of the material operational challenge of connecting and integrating NYPC with the separate technologies of other DCMs and/or DCOs. However, during this interim period, NYPC may engage, and FICC has represented in its filing to the Commission that NYPC is engaging, in discussions with other DCMs and DCOs. FICC has also represented in its filing that NYPC anticipates that it will be able to complete the integration of additional DCMs and/or DCOs in advance of this two-year period.

C. Other GSD Proposed Rule Changes

The proposed rule filing allows FICC to permit margining of positions held in accounts of an affiliate of a member within GSD, akin to the inter-affiliate margining in the CME Arrangement and the proposed NYPC Arrangement. Thus, as in those arrangements, if a GSD member defaults, its GSD clearing fund deposits, cash settlement amounts and other available collateral will be available to FICC to cover the member's default, as will the GSD clearing fund deposits and available collateral of any Permitted Margin Affiliate with which it cross-margins.

1. Loss Allocation

Under the current loss allocation methodology in GSD Rule 4, Clearing Fund and Loss Allocation, GSD allocates losses first to the most recent counterparties of a defaulting member. The proposed changes to GSD Rule 4 will delete this step in the loss allocation methodology in order to achieve a more even distribution of losses among GSD members without a focus on recent counterparties.

Under the proposed rule change any loss allocation will be made first against the retained earnings of FICC attributable to GSD in an amount up to 25 percent of FICC's retained earnings or such higher amount as may be approved by the Board of Directors of FICC.

If a loss still remains, GSD will divide the loss between the FICC Tier 1 Netting Members and the FICC Tier 2 Netting Members. The terms "Tier 1 Netting Member" and "Tier 2 Netting Member" have been introduced in the GSD Rules to reflect two different categories of membership, which have been designated as such by FICC for loss allocation purposes. Currently, only investment companies registered under the Investment Company Act of 1940, as amended, (which companies are subject to regulatory requirements restricting their ability to mutualize losses) will qualify as Tier 2 Netting Members. Tier 2 Netting Members will only be subject to loss to the extent they traded with the defaulting members and will not be responsible for mutualizing losses with participants with which they do not trade, in order to account for regulatory requirements applicable to such registered investment companies.

Tier 1 Netting Members will be allocated the loss applicable to them first by assessing the Clearing Fund deposit of each such member in the amount of up to $50,000, equally. If a loss remains, Tier 1 Netting Members will be assessed ratably in accordance with the respective amounts of their Required Fund Deposits based on the average daily amount of the member's Required Fund Deposit over the prior twelve months. Consistent with the current GSD rules, GSD members that are acting as inter-dealer brokers will be limited to a loss allocation of $5 million with respect to their inter-dealer broker activity.

2. Margin Calculation—Intraday Margin Calls

GSD proposes to calculate Clearing Fund requirements twice per day. GSD will retain its regular calculation and call as set out in the GSD rules. An additional daily intra-day calculation and call ("Intraday Supplemental Clearing Fund Deposit") are being added to GSD's rules.[30] The intra-day call will be subject to a threshold that will be identified in FICC's risk management procedures.[31] In addition, GSD will process a mark-to-market pass-through twice per day, instead of the current practice of once daily. The second collection and pass-through of mark-to-market amounts will include a limited set of components to be defined in FICC's risk management procedures. All mark-to-market debits will be collected in full. FICC will pay out mark-to-market credits only after any intra-day clearing fund deficit is met.

Since GSD will be recalculating and margining a GSD member's exposure intra-day, the margin calculation methodology set forth in GSD Rule 4, Clearing Fund and Loss Allocation, will be revised to eliminate the "Margin Requirement Differential" component of the FICC clearing fund calculation. In addition, GSD Rule 4 will be revised to provide that in the case of a Margin Portfolio that contains accounts of a Permitted Margin Affiliate, FICC will apply the highest VaR confidence level applicable to the GSD member or the Permitted Margin Affiliate, in the event that multiple confidence levels are used to determine margin. Application of a higher VaR confidence level will result in a higher margin rate. Consistent with current GSD rules, a minimum Required Fund Deposit of $5 million will apply to a member that maintains broker accounts.

3. Consolidated Funds-Only Settlement

The funds-only settlement process at GSD currently requires a member to appoint a settling bank that will settle the member's net debit or net credit amount due to or from GSD by way of the National Settlement Service of the Board of Governors of the Federal Reserve System ("NSS"). Any funds-only settling bank that will settle for a member that is also an NYPC member or that will settle for a member and a Permitted Margin Affiliate that is an NYPC member will have its net-net credit or debit balances at each clearing corporation, other than balances with respect to futures positions of a "customer" as such term is defined in

[30] *See* GSD Rule 4, Clearing Fund and Loss Allocation, Section 2a as proposed to be amended by the proposed rule change.

[31] *Id.* FICC shall establish procedures for collection of an amount calculated in respect of a Member's Intraday Supplemental Fund Deposit, including parameters regarding threshold amounts that require payment, and the form and time by which payment is required to be made to FICC.

CFTC Regulation 1.3(k), aggregated and netted for operational convenience and will pay or be paid such netted amount. The proposed rule change makes clear that, notwithstanding the consolidated settlement, the member will remain obligated to GSD for the full amount of its funds-only settlement amount.

4. Submission of Locked-In Trades from NYPC

The current GSD rules allow for submission of "locked-in trades" (*i.e.,* trades that are deemed compared when the data on the trade is received from a single source) [32] submitted by a locked-in trade source on behalf of a GSD member. Currently, designated locked-in trade sources are Federal Reserve Banks on behalf of the Treasury Department, Freddie Mac, and GCF-Authorized Inter-Dealer Brokers for GCF Repo transactions. Under the proposed rule change, GSD Rule 6C, Locked-In Comparison, will be amended to include NYPC as an additional locked-in trade source. This is necessary because there will be futures transactions cleared by NYPC that will proceed to physical delivery. NYPC will submit the trade data as a locked-in trade source for processing through FICC, identifying the GSD member that had authorized FICC to accept the locked-in trade from NYPC. Once these transactions are submitted to FICC, they will no longer be futures, but rather will be in the form of buys or sells eligible for processing by GSD. As will be the case with other locked-in trade submissions accepted by FICC, the GSD member designated in the trade information must have executed appropriate documentation evidencing to FICC its authorization of NYPC.

5. Deletion of the Category 1/Category 2 Distinction

The proposed rule change will delete the legacy characterization of certain types of members as either "Category 1" or "Category 2," a distinction that currently applies to "Dealer Netting Members," "Futures Commission Merchant Netting Members" and "Inter-Dealer Broker Netting Members" at GSD. Historically, the two categories were used to margin lower capitalized members (*i.e.,* Category 2) at a higher rate. Following FICC's adoption of the VaR methodology for GSD in 2006,[33] FICC has determined that the distinction between Category 1 and Category 2 members is no longer necessary. Rather than margin netting members at higher rates solely due to a single static capitalization threshold, FICC is able, by use of the VaR margin methodology, to margin netting members at a higher rate by applying a higher confidence level against any netting member, which, regardless of size, FICC has determined poses a higher risk.

With the deletion of the Category 1/Category 2 distinction, Section 1 of GSD Rule 13, Funds-Only Settlement, is proposed to be changed to provide that all netting members could receive forward mark adjustment payments, subject to FICC's general discretion to withhold credits that would be otherwise due to a distressed netting member.

6. Amendment of CME Agreement

The proposed NYPC Arrangement will necessitate an amendment to the CME Agreement to clarify that the NYPC Arrangement will take priority over the CME Arrangement when determining residual FICC positions that will be available for cross-margining with the CME. As a result, only those FICC positions that are not able to be cross-margined with NYPC positions under the NYPC Arrangement will generally be considered for cross-margining with the CME. In addition, when calculating and presenting liquidation results under the CME Agreement, the amendment will provide that FICC's liquidation results will include FICC's liquidation results in combination with NYPC's liquidation results because the NYPC Agreement will provide for a right of first offset between FICC and NYPC. The CME Agreement showing the proposed changes was filed as an attachment to the proposed rule change as part of Exhibit 5.

D. Summary of Other Proposed Changes to Rule Text

In GSD Rule 1, Definitions, the following definitions are proposed to be added, revised or deleted:

The terms "Broker Account" and "Dealer Account" will be added to the text of the GSD Rules. A "Broker Account" is an account that is maintained by an inter-dealer broker netting member, or a segregated broker account of a netting member that is not an inter-dealer broker netting member. An account that is not a Broker Account is referred to as a Dealer Account.

"Coverage Charge" will be revised to refer to the additional charge with respect to the member's Required Fund Deposit (rather than its VaR Charge) which brings the member's coverage to a targeted confidence level.

"Current Net Settlement Positions" will be corrected to clarify its current intent, that it is calculated with respect to a certain business day and not necessarily on that day, since it may be calculated after market close on the day prior to its application (*i.e.,* before or after midnight between the close of business one day and the open of business on the next day).

"Excess Capital Differential" will be corrected to refer to the amount by which a member's VaR Charge exceeds its excess capital, instead of by reference to the amount by which its required clearing fund deposit exceeds its excess capital.

"Excess Capital Premium Calculation Amount" will be deleted because, with the introduction of VaR methodology, the calculation is no longer applicable. The terms "Excess Capital Differential" and "Excess Capital Ratio" will be amended to delete archaic references to "Excess Capital Premium Calculation Amount" and to refer instead to the comparison of a member's capital calculation to its VaR Charge. In addition, the text of Section 14 of GSD Rule 3 will be amended to provide that the "Excess Capital Premium" charge applies to any type of entity that is a GSD netting member rather than limiting its applicability to only the specified types formerly identified in the text.

"Excess Capital Ratio" will be amended to mean the quotient resulting from dividing the amount of a member's VaR Charge by its excess net capital.

"GSD Margin Group" will be added to refer to the GSD accounts within a Margin Portfolio.

"Margin Portfolio" will be added to refer to the positions designated by the member as grouped for cross-margining, subject to the rules set forth in GSD Rule 4. "Dealer Accounts" and "Broker Accounts" cannot be combined in a common Margin Portfolio. A "Sponsoring Member Omnibus Account" cannot be combined with any other accounts.

"Unadjusted GSD Margin Portfolio Amount" will be added to define the amount calculated by GSD with regard to a Margin Portfolio, before application of premiums, maximums or minimums.

[32] The term "Locked-In Trade" means a trade involving Eligible Securities that is deemed a compared trade once the data on such trade is received from a single, designated source and meets the requirements for submission of data on a locked-in trade pursuant to GSD's rules, without the necessity of matching the data regarding the trade with data provided by each member that is or is acting on behalf of an original counterparty to the trade. The data regarding a locked-in trade are provided to FICC by a locked-in trade source that has been authorized by a member that is a party to the trade to provide such data to FICC.

[33] Securities Exchange Act Release No. 55217 (January 31, 2007), 72 FR 5774.

It includes the VaR Charge and the coverage charge for GSD. In the case of a Cross-Margining Participant of GSD, the Unadjusted GSD Margin Portfolio Amount also will include the cross-margining reduction, if any.

The terms "Category 2 Gross Margin Amount," "Margin Adjustment Amount," "Repo Volatility Factor," and "Revised Gross Margin Amount" will be deleted from GSD Rule 1 since they are no longer used elsewhere in the GSD Rules. The Schedule of Repo Volatility Factors will be deleted because it is no longer applicable.

In Section 2 of GSD Rule 3, Ongoing Membership Requirements, the requirement that GCF counterparties submit information relating to the composition of their NFE-related accounts,[34] will be amended to require the submission of such information periodically, rather than on a quarterly basis. GSD currently requires this information every other month and by this change, FICC could institute periodic reporting on a schedule that is appropriate at such time, in response to current conditions. This has the potential to help tailor the frequency of reporting based on market conditions and thereby facilitate the risk management of the clearing agency.

In Section 9 of GSD Rule 4, Clearing Fund and Loss Allocation, concerning the return of excess deposits and payments, FICC's discretion to withhold the return of excess clearing fund to a member that has an outstanding payment obligation to FICC will be changed from being based on FICC's determination that the member's anticipated transactions or obligations over the next 90 calendar days may be reasonably expected to be materially different than those of the 90 prior calendar days, under the current rule, to being based on FICC's determination that the member's anticipated transactions or obligations in the near future may be reasonably expected to be materially different than those in the recent past. In addition, technical and clarifying changes are proposed to be made to the rules and cross-references to rule sections contained throughout. The rules have been reviewed by FICC and proposed to be corrected as needed to reflect the correct rule section references as originally intended.

[34] The term "NFE-Related Account" means each securities account and deposit account maintained by a GCF Clearing Agent Bank for an Interbank Pledging Member in which the GCF Clearing Agent Bank has, pursuant to agreement with the Interbank Pledging Member or by operation of law, a security interest or right of setoff securing or supporting the payment of obligations of such Interbank Pledging Member to the Bank, including each such account to which such Interbank Pledging Member's Prorated Interbank Cash Amount is debited. *See* GSD Rule 1, Definitions.

III. Comments

The Commission received thirteen comments to the proposed rule change and four response letters responding to comments.[35] Nine commenters supported the proposed rule.[36] Of this group, seven commenters generally stated that the cross-margining proposal benefits competition by permitting "open access" to cross-margining.[37] In addition, six commenters argued that the proposed rule change permits risk minimization[38] and promotes transparency.[39]

[35] *See supra* notes 3 and 4.

[36] Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel, LLC (December 21, 2010); Letter from Gary DeWaal, Senior Managing Director and Group General Counsel, Newedge USA, LLC (December 21, 2010); Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010); Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010); Letter from James B. Fuqua and David Kelly, Managing Directors, Legal, UBS Securities, LLC (December 20, 2010); Letter from John Willian, Managing Director, Goldman Sachs (December 17, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); Letter from Douglas Engmann, President, Engmann Options, Inc. (December 6, 2010); and Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010).

[37] Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); Letter from John Willian, Managing Director, Goldman Sachs (December 17, 2010); Letter from James B. Fuqua and David Kelly, Managing Directors, Legal, UBS Securities, LLC (December 20, 2010); Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel, LLC (December 21, 2010); Letter from Gary DeWaal, Senior Managing Director and Group General Counsel, Newedge USA, LLC (December 21, 2010); and Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010).

[38] Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010); Letter from Douglas Engmann, President, Engmann Options, Inc. (December 6, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010); Letter from James B. Fuqua and David Kelly, Managing Directors, Legal, UBS Securities, LLC (December 20, 2010); and Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010).

[39] Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); Letter from James B. Fuqua and David Kelly, Managing Directors, Legal, UBS Securities, LLC (December 20, 2010); Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel, LLC (December 21, 2010); Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010); and Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010).

Three commenters opposed the proposed rule, absent changes to mitigate what they identified as anti-competitive features.[40] One commenter recommended further study of the rule and its risk methodology, but agreed with the commenters opposing the proposed rule change on the grounds that the rule should permit only non-exclusive arrangements that promote competition.[41] The commenters against the proposed rule change generally stated that the cross-margining scheme is anti-competitive and raises risk management issues. These commenters raised concerns or provided comments related to the following major aspects of the cross-margining proposal: (1) The effect on competition; (2) risk management; and (3) the effect on efficiency and costs. FICC responded to these comments in three comment letters that it submitted.[42]

A. Effect on Competition

Many of the commenters' concerns with respect to competition stemmed from FICC having an exclusive agreement to enter into a direct arrangement for "one-pot" cross-margining with NYPC.[43] NYPC is jointly owned by NYSE Euronext and DTCC. DTCC is the parent company of FICC. NYSE Liffe is the global derivatives business of the NYSE Euronext. These affiliations combined with the exclusive nature of the direct arrangement raised concerns for these commenters.

With regard to allowing other parties direct access to cross-margining, FICC argued that it is neither operationally feasible nor prudent to establish a framework of multiple, competing "one-

[40] Letter from William H. Navin, Executive Vice President and General Counsel, The Options Clearing Corporation (December 21, 2010); Letter from Richard D. Marshall, Ropes & Gray on behalf of ELX Futures, LP (December 15, 2010); and Letter from John C. Hiatt, Chief Administrative Officer, Ronin Capital (December 10, 2010).

[41] Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX (December 21, 2010).

[42] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011); Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011); and Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

[43] Letter from William H. Navin, Executive Vice President and General Counsel, The Options Clearing Corporation (December 21, 2010); Letter from Richard D. Marshall, Ropes & Gray on behalf of ELX Futures, LP (December 15, 2010); Letter from John C. Hiatt, Chief Administrative Officer, Ronin Capital (December 10, 2010); and Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX (December 21, 2010).

pots" with multiple, competing DCOs under this arrangement.[44] Among other things, such an arrangement would result in FICC clearing members that are members of multiple DCOs cross-margining their futures positions against different segments of their portfolios at FICC, rather than having the risk of their positions being measured comprehensively.[45] FICC stated that it believes that the attendant risk of delays and errors in processing would substantially increase systemic risk as clearing members continuously moved positions at FICC from one cross-margin pot to another in order to maximize their margin savings.[46] For example, there is the potential that operational issues of managing such movements across multiple systems would create risks in the settlement process by adding complexities associated with linking and monitoring the use of multiple one cross-margin pot arrangements. Furthermore, FICC stated that the existence of multiple "one-pots" would likely greatly complicate the liquidation of a cross-margining participant that was in default at FICC and NYPC, thereby increasing systemic risk.[47]

Commenters recognized that other DCOs (*i.e.,* DCOs other than NYPC) will have the ability to obtain indirect access to the cross-margining arrangement by entering into a Limited Purpose Participant ("LPP") agreement and becoming an LPP of NYPC. Commenters raised concerns about the potential for this type of indirect access, citing concerns about the requirements to agree to be bound by the rules of NYPC, agree to an allocation of clearing fees, and contribute to the NYPC guaranty fund in an amount equal to the contribution made by NYSE Euronext.[48]

FICC responded to these comments.[49] Specifically, FICC stated that, while DCOs that are LPPs clearing through NYPC would need to abide by NYPC's rules, NYPC's intention is that there would be separate requirements (including with respect to margin deposits and guaranty fund contributions applied) to the LPP, on the one hand, and the LPP's members, on the other, unless: (i) NYPC and the LPP separately agree to allocate those amounts to the LPP and its members, or (ii) a clearing member of NYPC is also a clearing member of an LPP.[50] FICC and NYPC also represented that the NYPC rules would apply to a LPP but not to the members of the LPP, unless such members are otherwise clearing members of NYPC.[51] In addition, FICC noted that NYPC Rule 801 is designed to permit maximum flexibility in structuring the admission of LPPs, as it is contemplated that any such admission would be subject to substantial negotiation between NYPC and the prospective LPP regarding the operational mechanics of margin deposits and related subjects.[52]

In addition, FICC has represented to the Commission that the fees NYPC charges LPPs will be determined on a case-by-case basis based on the services provided to recoup operational and other costs that NYPC incurs in integrating the new LPP.[53] Moreover, FICC and NYPC clarified and affirmatively represented that the limited purpose participant agreements will be individually negotiated and that "the Guaranty Fund contribution that will be required by NYPC from any Limited Purpose Participant will be determined by risk-based factors without regard to whether such contribution amount is more or less than the amount contributed to the NYPC Guaranty Fund by NYSE Euronext".[54]

Three commenters also noted that under the proposed structure, it may take up to two years before other DCMs are permitted to clear at NYPC or before other DCOs might be given indirect access in order to participate in the NYPC Arrangement, which may cause commercial impairment.[55] Two other commenters, however, argued that the delay is not unduly burdensome on competition,[56] with one in particular explaining that "[a]ny new arrangement needs the requisite time to ensure that it satisfies all of the underlying concerns and issues that may occur with any new concept".[57] FICC responded, saying that the transition period is necessary to complete implementation, systems integration, and testing, among other things, and that it and NYPC have pledged to open the arrangement to other participants as soon as operationally feasible.[58] FICC also stated that attempting to integrate a pre-existing clearinghouse directly into the "one-pot" cross-margining arrangement would by necessity be even more difficult and likely more costly than the integration between FICC and NYPC, which was created in order to cross-margin positions with FICC.[59] In

[44] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011).

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Letter from William H. Navin, Executive Vice President and General Counsel, The Options Clearing Corporation (December 21, 2010); Letter from Richard D. Marshall, Ropes & Gray on behalf of ELX Futures, LP (December 15, 2010); Letter from John C. Hiatt, Chief Administrative Officer, Ronin Capital (December 10, 2010); and Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX (December 21, 2010).

[49] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011) and Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation; Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011); and Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

[50] *Id.*

[51] Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

[52] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011) and Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011).

[53] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011); Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011); and Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

[54] Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011) and Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

[55] Letter from Richard D. Marshall, Ropes & Gray on behalf of ELX Futures, LP (December 15, 2010); Letter from William H. Navin, Executive Vice President and General Counsel, The Options Clearing Corporation (December 21, 2010); and Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX (December 21, 2010).

[56] Letter from Gary DeWaal, Senior Managing Director and Group General Counsel, Newedge USA, LLC (December 21, 2010) and Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010).

[57] Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010).

[58] FICC represented that "[f]ollowing the announcement of NYPC, FICC, the NYPC management team and senior management of NYSE Euronext have repeatedly reached out to [The Options Clearing Corporation], as well as other DCOs and DCMs, to initiate the process of integrating such other organizations into the 'single pot'. While those efforts have not yet been productive, FICC and NYPC remain committed to expanding the 'single pot' to include other DCOs and DCMs." Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011). *See also supra* Section II.B., at 16.

[59] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation

Continued

addition, FICC has previously stated that NYPC has committed that it will complete the process to allow one or more DCMs or DCOs to be admitted and integrated into the "one-pot" cross-margining arrangement as soon as feasible, but no later than 24 months from the start of operations.

The nine commenters in favor of the proposed rule change generally argued that the rule change will increase competition in trade execution and clearing which, in turn, will encourage innovation, efficiency, and improved choices.[60] Furthermore, FICC also indicated that its proposal promotes competition. Specifically, FICC stated that "[u]nlike the traditional 'vertical' relationship between futures exchanges and their affiliated * * * DCOs * * *, NYPC has been uniquely structured * * * to allow unaffiliated DCOs and * * * DCMs * * * 'open access' to the benefits of the 'single pot' cross-margining arrangement as soon as operationally feasible, subject to only certain object, reasonable and non-discriminatory criteria".[61] FICC also stated that the current market for clearing U.S. dollar-denominated interest rates is dominated by one entity and that its approach has the potential to introduce competition in this market.[62]

B. Risk Management

Five commenters believed that the proposal would increase the transparency of risks across asset classes and allow regulators to better monitor and assess risk.[63] These commenters supported the proposed rule's use of the Value at Risk (VaR) methodology, because it is well understood, has been extensively tested, and relies on historical information to simulate the market.[64] Moreover, two commenters noted that "one-pot" margining decreases the risk for market participants because it allows for the offset of risk between U.S. Treasury futures and U.S. Treasury cash bonds.[65] Additionally, two commenters believed that the proposal allows for a greater portion of financial instruments to be centrally cleared, which, among other things, reduces overall risk.[66]

Two commenters, however, raised concerns about risk management, stating that because cross-margining allows for greater leverage than standard margining, in particular during periods of market stress and extreme volatility, the proposed rule may increase systemic risk.[67] FICC responded by stating that ''the NYPC–FICC margin model does not necessarily increase leverage and may, in fact, reduce leverage in highly risky portfolios with limited hedges.''[68] FICC further explained that, ''[a]t the same time, the NYPC–FICC model can offer margin reductions for hedged portfolios because it more accurately estimates true economic risk by taking into account the benefits of highly correlated, offsetting positions in a single portfolio.''[69]

One commenter suggested that the VaR method for calculating margin requirements should be tested further.[70] This commenter also suggested that the scenario-based Standard Portfolio Analysis of Risk ("SPAN") method be considered and tested in comparison to VaR. FICC's response noted that the proposed VaR methodology is based on a common method of historical simulation and that it has conducted risk-related testing, including sensitivity tests, back testing of the model's validity, and stress tests of the sufficiency of the guaranty fund.[71]

One commenter requested that documentation of previous consideration of the risk aspects of the proposal be made public.[72] In response, FICC provided a discussion and analysis of its VaR methodology compared to SPAN.[73] FICC explained that because it needs to measure the risk of combined portfolios for futures and cash positions, it believes that a historical VaR-based margin model provides a more accurate estimate of portfolio risk than SPAN.[74] FICC noted, however, that because it is standard practice for the futures industry to use SPAN to calculate and monitor margin requirements, it will make available SPAN formatted calculations of its VaR-based customer risk parameters to clearing members and their customers. FICC also noted that in initially listing NYPC-clearing contracts, NYSE Liffe U.S. will use, among other factors, SPAN-formatted input parameters to establish minimum customer initial margin requirements for each NYPC-cleared interest rate contract and intra- and inter-commodity spreads.[75]

C. Effect on Efficiency and Costs

Four commenters stated that the proposal promotes the reduction of risk that will lead to margin and capital efficiencies and lower costs.[76] One

(January 4, 2011); and Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011).

[60] *See, e.g.,* Letter from John Willian, Managing Director, Goldman Sachs (December 17, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); and Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel, LLC (December 21, 2010).

[61] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011).

[62] *Id.*

[63] Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010); Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010); Letter from James B. Fuqua and David Kelly, Managing Directors, Legal, UBS Securities, LLC (December 20, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); and Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010).

[64] Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010); Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010); Letter from James B. Fuqua and David Kelly, Managing Directors, Legal, UBS Securities, LLC (December 20, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); and Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010).

[65] Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010) and Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010).

[66] Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel, LLC (December 21, 2010) and Letter from John A. McCarthy, General Counsel, GETCO (December 21, 2010).

[67] Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX (December 21, 2010) and Letter from John C. Hiatt, Chief Administrative Officer, Ronin Capital (December 10, 2010).

[68] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011).

[69] *Id*

[70] Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX (December 21, 2010).

[71] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011).

[72] Letter from Alex Kogan, Vice President and Deputy General Counsel, NASDAQ OMX (January 10, 2011).

[73] Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 7, 2011). The public record contains information regarding testing that went to the subject of risk management. The Commission also received from FICC proprietary, highly confidential information, including information about individual portfolios. This non-public information, in addition to the public information submitted in support of the rule proposal, supported the Commission's conclusion that the proposal is consistent with the Act, but was not included in the public record because of its sensitivity.

[74] *Id.*

[75] Letter from Alex Kogan, Vice President and Deputy General Counsel, NASDAQ OMX (January 10, 2011).

[76] Letter from Gary DeWaal, Senior Managing Director and Group General Counsel, Newedge USA, LLC (December 21, 2010); Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel, LLC (December 21, 2010); Letter from Ronald Filler, Professor of Law and Director of the Center on Financial Services Law, New York Law School (December 8, 2010); and Letter from James B. Fuqua and David Kelly,

commenter believed that "one-pot" margining would increase cash flow and margin efficiencies for certain clearing members.[77] Two commenters also stated that the "one-pot" approach will reduce delivery costs because it offers direct delivery of expiring futures contracts into cash bonds held at FICC, which will minimize fails and squeezes and improve price convergence and stress on the settlement system.[78] Additionally, two commenters that were opposed to the cross-margining agreement as proposed also expressed their general support for "one-pot" cross-margining on the ground that it reduces risk while facilitating more efficient uses of capital markets.[79]

According to FICC's response, the proposed rule streamlines the delivery process for U.S. Treasury futures, which will improve operational efficiency and decrease systemic settlement risk.[80] FICC also stated that the proposal should increase liquidity by providing market participants with an alternate venue for trading U.S. dollar-denominated interest rate futures contracts.[81]

IV. Discussion

The Commission has carefully considered the proposed rule change and the comments thereto and the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, including Sections 17A(a)(2)(A)(ii)[82] and 17A(b)(3)(A), (F) and (I) of the Act.[83]

The proposed rule change provides for modifications to certain risk management related processes and definitions under GSD's rules, including changes to the loss allocation methodology, intraday margining, categories of membership, and related definitional changes. The Commission believes that these changes to GSD's rules are consistent with Sections 17A(b)(3)(A) and (F) of the Act because they should help facilitate and promote the prompt and accurate clearance and settlement of securities transactions, and help assure the safeguarding of securities and funds under FICC's control or for which it is responsible. In particular, the Commission believes that these changes to GSD's rules, by virtue of strengthening FICC's risk management and related operations, should result in a more timely, accurate, and efficient system of settlement.

In addition, the proposed rule change would provide for a cross-margining arrangement between certain positions in GSD and NYPC. The Commission's staff has closely evaluated the proposed cross-margining arrangement including the risk management, competition and efficiency issues raised by the proposed rule change (as discussed below) against the requirements of the Act, including Sections 17A(b)(3)(F) and (I) of the Act. Based on our staff's analysis, and taking into consideration the matters discussed throughout, including the representations discussed below, the Commission finds the proposed rule change is consistent with the Act.

A. Risk Management

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.[84] The Commission has historically supported and approved cross-margining at clearing agencies and has previously recognized the potential benefits of cross-margining systems, which include freeing capital through reduced margin requirements, reducing clearing costs by integrating clearing functions, reducing clearing organization risk by centralizing asset management and harmonizing liquidation procedures.[85] The Commission has encouraged cross-margining arrangements as a way to promote more efficient risk management across product classes.[86] Cross-margining arrangements may be consistent with Section 17A(b)(3)(F) in that they may strengthen the safeguarding of assets through effective risk controls that more broadly take into account offsetting positions of participants in both the cash and futures markets, and promote prompt and accurate clearance and settlement of securities through increased efficiencies.

As set forth in the proposal, FICC will perform margin calculations using VaR methodology with a 99 percent confidence level and 3-day liquidation for cash positions and 1-day liquidation for futures, using historical information for the prior year (250 trading days for futures and 252 for cash positions) and the margin calculations will employ a front weighted mechanism that places a greater emphasis on more recent observations. FICC will also conduct daily back testing and assess an additional coverage component charged to participants if the back tests show insufficient coverage. In the event of unusual market conditions, FICC or NYPC could at any time require additional margin provided such requirements are consistent with the standards in Section 17A of the Exchange Act. The Commission believes these actions assist in the promotion under the proposed cross-margining arrangement of prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds consistent with the requirements under Section 17A(b)(3)(F) of the Act because they would facilitate appropriate risk management by FICC by providing flexibility and promoting ongoing monitoring of risk.[87]

The proposal also contains provisions for managing risk in the event of a

Managing Directors, Legal, UBS Securities, LLC (December 20, 2010).

[77] Letter from John Willian, Managing Director, Goldman Sachs (December 17, 2010).

[78] Letter from Jack DiMaio, Managing Director, Morgan Stanley (December 2, 2010) and Letter from Donald J. Wilson, Jr., DRW Trading Group (December 21, 2010).

[79] Letter from John C. Hiatt, Chief Administrative Officer, Ronin Capital (December 10, 2010) and Letter from William H. Navin, Executive Vice President and General Counsel, The Options Clearing Corporation (December 21, 2010).

[80] Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011).

[81] *Id.*

[82] 15 U.S.C. 78q–1(b)(2)(A)(ii). This provision directs the Commission to use its authority to facilitate the establishment of coordinated facilities for clearance and settlement of transactions in securities and contracts of sale for future delivery.

[83] 15 U.S.C. 78q–1(b)(3)(A), (F) and I. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[84] 15 U.S.C. 78q–1(b)(3)(F).

[85] *See, e.g.,* Securities Exchange Act Release No. 27296 (September 26, 1989), 54 FR 41195 (approving proposed rule changes establishing cross-margining between The Options Clearing Corporation and the Chicago Mercantile Exchange) and Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39561 (approving proposed rule changes concerning cross-margining between The Options Clearing Corporation and the Intermarket Clearing Corporation). Previously, the Interim Report of the President's Working Group on Financial Markets (May 1988) recommended that the SEC and CFTC facilitate cross-margining programs among clearing organizations. In addition, the Bachmann Task Force, which was formed by the Commission in response to the 1987 Market Break, presented its findings to the Commission in May 1992 that included, among other things, a recommendation that cross-margining programs among clearing agencies be implemented or expanded. *See* Securities Exchange Act Release No. 31904 (February 23, 1993), 58 FR 11806 (March 1, 1993).

[86] *See* Securities and Exchange Act Release No. 44301, 66 FR 28297 (May 11, 2001) (order approving a "two-pot" cross-margining proposal between FICC's predecessor and CME). In addition, the Interim Report of the President's Working Group on Financial Markets (May 1988) also recommended that the SEC and CFTC facilitate cross-margining programs among clearing organizations.

[87] 15 U.S.C. 78q–1(b)(3)(F).

member default. The NYPC Agreement provides for the sharing of losses by FICC and NYPC in the event that the "one-pot" portfolio margin deposits of a defaulting participant are not sufficient to cover the losses resulting from the liquidation of that participant's trades and positions. In the event of a member default, the proposal requires that FICC and NYPC would liquidate posted margin as a single portfolio, which will allow them to preserve the value of the assets posted as collateral. In addition, FICC and NYPC are providing financial guarantees to each other in the event the available collateral is insufficient. These features of the proposed rule change would help to ensure that FICC is able to meet its settlement obligations in the event of default. As a result, the Commission believes that the proposal would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in a manner consistent with Section 17A(b)(3)(F) of the Act.[88]

The Commission has previously noted that cross-margining systems entail certain risks.[89] For instance, even in normal market conditions, products that have been highly correlated in the past may diverge and may diverge even more so in extreme market conditions. Such a breakdown in correlation might lead to inadequate clearing margins or losses upon a liquidation. To address these concerns, as noted in the description of the proposed rule change and in FICC's response letters, FICC has performed testing of the VaR margining model. This included sensitivity tests of the model to changing market conditions, back tests of sample portfolios to check model validity, stress tests of sample portfolios to test the sufficiency of the NYPC guaranty fund, and back tests to verify the sufficiency of coverage after the FICC–NYPC cross-margining reductions are applied.

The Commission takes commenters' concerns about risk management seriously. As discussed below, to provide the Commission with enhanced ability to monitor FICC's risk management, FICC has represented and undertaken to make continuing risk analysis reports, discussed below, to the Commission. This ongoing reporting should also help FICC conduct its own monitoring of the NYPC Arrangement. In addition, FICC is subject to the Commission's ongoing examination program, which examines registered clearing agencies with respect to their risk management systems and other aspects of their operations. The Commission believes FICC's prior analysis, as discussed above, as well as FICC's commitment to provide additional reports on a periodic basis will promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds in a manner consistent with Section 17A(b)(3)(F) of the Act.

B. Competition

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[90] Section 17A(b)(3)(I) of the Act requires that the rules of the clearing agency do not impose any burden on competition not necessary and appropriate in furtherance of the purposes of the Exchange Act.[91]

The Commission has carefully considered the comments and the responses submitted to the Commission. With respect to commenters' concerns regarding the exclusive nature of the agreement to enter into a direct arrangement for "one-pot" cross-margining with NYPC, the Commission believes that FICC has raised valid concerns regarding the potential for greater risk arising from connections to multiple DCOs. The Commission believes that the NYPC Arrangement, and FICC's representations in its responses, discussed above, regarding how indirect access would operate in practice, would provide increased potential for indirect access to the cross-margining arrangement by entering into a LPP agreement and becoming an LPP of NYPC.

The Commission believes that the proposed FICC indirect access arrangement would provide a viable option for those seeking to access the "one-pot" cross-margining arrangement because it would be open to all DCOs and DCMs and would contain membership criteria that are commensurate with risks associated with accessing the "one-pot" cross-margining arrangement. Accordingly, the Commission believes the proposed cross-margining arrangement is not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency consistent with Section 17A(b)(3)(F).[92]

The Commission acknowledges that the admission and integration of other DCMs or DCOs will not be immediate. However, the Commission believes that, in light of existing technological limitations, FICC has raised valid concerns regarding the operational feasibility of providing multiple links for direct access to the cross-margining arrangement at this time. These potential operational risks associated with managing such an arrangement, such as maintaining appropriate account of the positions of participants and calculating appropriate margin, must be weighed against the desire for greater direct access immediately.

The Commission notes that FICC has previously indicated that NYPC has committed that it will complete the process to allow one or more DCMs or DCOs to be admitted and integrated into the "one-pot" cross-margining arrangement as soon as feasible, but no later than 24 months from the start of NYPC's operations. FICC has stated that the transition period is necessary to complete implementation, systems integration, and testing, among other things, and that it would open the arrangement to other participants as soon as operationally feasible.[93] The Commission believes that the operational issues, including those cited by FICC, would need to be resolved prior to admitting a DCM or DCO as an LPP. The Commission believes that this aspect of the proposal would not impose any burden on competition not necessary and appropriate in furtherance of the purposes of the Exchange Act consistent with Section 17A(b)(3)(I) of the Act.

Moreover, the Commission notes that FICC has stated that the proposal would provide market participants with an alternate venue for trading U.S. dollar-denominated interest rate futures contracts, thereby potentially helping to increase competition in this market. The Commission believes that these pro-competitive features of the proposal are consistent with the Act.

The Commission takes seriously commenters' concerns regarding competition. As discussed below, FICC has represented and undertaken to provide the Commission with

[88] 15 U.S.C. 78q–1(b)(3)(F).

[89] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39561.

[90] 15 U.S.C. 78q–1(b)(3)(F).

[91] 15 U.S.C. 78q–1(b)(3)(I).

[92] 15 U.S.C. 78q–1(b)(3)(F).

[93] FICC represented that following the announcement of NYPC, FICC, the NYPC management team and senior management of NYSE Euronext have been in discussions with other DCOs and DCMs to initiate the process of integrating such other organizations into the "one-pot." While those efforts have not yet been productive, FICC and NYPC remain committed to expanding the "one-pot" to include other DCOs and DCMs. Letter from Douglas Landy, Allen & Overy on behalf of the Fixed Income Clearing Corporation (January 4, 2011).

information about the LLP agreements concerning the proposed cross-margining arrangements.

The Commission believes FICC's commitment to provide ongoing information with respect LLP agreements would help to evaluate its efforts to facilitate indirect access and would thereby help to ensure that the proposal would not impose any burden on competition not necessary and appropriate in furtherance of the purposes of the Exchange Act, consistent with Section 17A(b)(3)(I) of the Act.[94] The Commission anticipates that this information will be primarily used for the limited purpose of identifying any instances in which there is potential non-compliance with the terms of this order or the representations made by FICC.

The Commission has considered the concerns presented by commenters and has determined that the benefits of the proposal outweigh any anti-competitive effects of the proposal. The Commission believes that the proposal would not impose any burden on competition not necessary and appropriate in furtherance of the purposes of the Exchange Act consistent with Section 17A(b)(3)(I) of the Act.[95]

C. Effect on Efficiency and Costs

As previously discussed, both FICC and those commenting on the proposed rule change expect that the cross-margining proposal will reduce costs, including delivery costs, and increase cash flows through margin efficiencies. The Commission believes that the NYPC Arrangement has the potential to increase efficiencies by allowing clearing agencies to streamline the delivery process, employ common and coordinated risk management and margin methodologies, and lower costs for market participants.

A "two-pot" arrangement allows for offsets and lowered margin based on correlations in a members' cleared positions at different clearinghouses; however, there is not a unified arrangement for risk management or loss allocations.[96] The "two-pot" cross-margining arrangements approved by the Commission in the past, including one between FICC and CME, have allowed clearinghouses to allow credit against the margin requirement for offsetting positions cleared at another clearinghouse, but each clearinghouse maintained and managed separate pools of collateral. The "one-pot" arrangement would offer greater margin reductions than a "two-pot" arrangement.

As result of these benefits in facilitating a more accurate and cost-effective system for settlement, the Commission believes that the proposal would promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds in a manner consistent with Section 17A(b)(3)(F) of the Act.[97]

D. Additional Reporting

As noted above, FICC has represented that it will provide certain information and reports to the Commission on an ongoing basis in order to facilitate ongoing monitoring of the cross-margining arrangement and thereby help ensure compliance with the standards in Section 17A of the Act.[98] In particular, with respect to information pertaining to risk matters, the Commission believes that these reports would assist the Commission in its efforts to monitor risk management practices under the cross-margining arrangement by providing information to help confirm that the actual performance of the models and systems are consistent with those anticipated during tests prior to launch. Specifically, FICC has agreed to provide the following information upon the proposed rule change becoming effective:

- For the first 250 trading days upon the proposed rule change becoming effective, FICC will provide the Commission staff with quarterly reports that itemize divergences between CME prices and NYSE Liffe prices for "look-alike contracts."[99]
- Semi-annually, FICC will provide the Commission staff with reports summarizing the sensitivity of the model used for the NYPC Agreement and the collected margin to the model's assumptions and established parameters.
- Quarterly, FICC will provide the Commission staff with detailed portfolio analyses of members participating in the NYPC Arrangement.
- Monthly, FICC will provide the Commission staff with reports summarizing the details of: (1) Any instances in which the account of a member participating in the NYPC Agreement experienced a loss that exceeded its margin requirement and the magnitude of such loss; (2) FICC's analysis of the sufficiency of NYPC's guaranty fund in conjunction with NYPC; and (3) FICC's analysis of daily correlations between the futures and cash products that are subject to the NYPC Arrangement.
- FICC will provide the Commission staff with DTCC's periodic default simulations that factor in members' participation in the NYPC Agreement.
- For 24 months upon the proposed rule change becoming effective, FICC will provide the Commission staff with information on a quarterly basis regarding potential LPPs, including progress on negotiations and discussions of agreements or potential agreements with potential LPPs.
- FICC will provide the Commission all agreements entered into between NYPC and any LPPs, as well as all amendments to such agreements, including, but not limited to, those regarding changes in the fee arrangements.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[100] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2010–09) be, and hereby is, approved.

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63969; File No. SR–BATS–2011–007]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. to Adopt BATS Rule 11.21, entitled "Input of Accurate Information"

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2]

[94] 15 U.S.C. 78q–1(b)(3)(I).

[95] 15 U.S.C. 78q–1(b)(3)(I).

[96] *See* Securities and Exchange Act Release No. 44301, 66 FR 28297 (May 11, 2001) (approving a "two-pot" cross-margining proposal between FICC's predecessor and CME).

[97] 15 U.S.C. 78q–1(b)(3)(F).

[98] Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

[99] "Look-alike contracts" refers to contracts that have similar economic features but are traded separately on CME and NYSE Liffe.

[100] 15 U.S.C. 78q–1.

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

[2] 17 CFR 240.19b–4.

notice is hereby given that on February 18, 2011, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it 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 adopt new BATS Rule 11.21 to require Members to identify each order accurately as a Principal, Agency, or Riskless Principal Order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new BATS Rule 11.21 for the purpose of increasing transparency and to enhance the surveillance database and audit trail of transaction data used by the Exchange in surveillance of its market. The proposed rule change would require Members to identify the capacity of each order accurately as a Principal, Agency, or Riskless Principal Order. For purposes of surveillance, the Exchange currently identifies the capacity of each order as Principal, Agency, or Riskless Principal; however, several other capacities are accepted upon order entry, including no response, which are thereafter mapped to one of the above-listed order capacities. By limiting the order capacity upon entry to Principal, Agency, or Riskless Principal and requiring Members to accurately submit an order capacity for each order, the Exchange will be able to more precisely identify the type of order received and more effectively surveil for abusive trading.

BATS does not have a rule that makes an explicit statement regarding a Member's obligation to input accurate information into the System. Notwithstanding, BATS believes that disciplinary cases against Members entering inaccurate or incomplete information may be brought appropriately under BATS Rule 3.1, which requires Members to observe high standards of commercial honor and just and equitable principles of trade. Rule 3.1 protects the investing public and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. Because of the regulatory importance of accurate information input in the System, BATS believes a rule that directly addresses Members' obligation to provide accurate information is warranted. The proposed rule makes clear Members' obligation to input accurate information into the System and that failure to do so would be considered a violation of BATS Rules.

BATS notes that it already has a rule in place for its equity options platform ("BATS Options") that requires members of BATS Options ("Options Members") to ensure that accurate information is input into the System, a requirement that includes, but is not limited to, the capacity of the Options Member as it relates to the order.[5] The Commission has also previously approved rules proposed by the Nasdaq Stock Market LLC ("Nasdaq") that apply to Nasdaq options and equities platforms and require participants to ensure that accurate information is entered into Nasdaq's system, including but not limited to the capacity of the participant.[6] Thus, the proposed rule change would: (1) make BATS Rules regarding equity trading consistent with its rules regarding options trading; and (2) bring BATS Rules in line with those of other self-regulatory organizations.

In order to allow Members sufficient time to review and complete any systems changes necessitated by this filing, the Exchange has proposed an operative date of April 4, 2011.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because 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 to protect investors and the public interest. Specifically, the changes proposed herein will serve to promote the accuracy of information input into the Exchange. Accurate information is necessary for the efficient and fair operation of the Exchange, and will assist the Exchange in surveilling the markets for fraudulent activity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the

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

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] BATS Rule 18.2(a)(6).

[6] *See* Securities Exchange Act Release 59547 (March 10, 2009), 74 FR 11386 (March 17, 2009).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

protection of investors and the public interest.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–007 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

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[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63971; File No. SR–NYSEARCA–2011–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.16 (Short Sales) in Order To Implement the Provisions of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934

February 25, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 24, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.16 (Short Sales) in order to implement the provisions of Rule 201 of Regulation SHO ("Rule 201")[4] under the Act, which, if triggered, imposes a restriction on the prices at which covered securities may be sold short ("Short Sale Price Test"). Among other things, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. The proposed rule amendment would establish procedures for the Exchange, as a listing market, to determine that a Short Sale Price Test has been triggered for a covered security. The proposed rule amendment would also establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the Short Sale Price Test is triggered, including establishing what types of short sale orders will be re-priced to achieve a permitted price, in accordance with Rule 201, during the period in which a Short Sale Price Test is in effect ("Short Sale Period").[5] Amended Rule 7.16 would also establish Exchange procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt." Finally, the proposed rule amendment would also establish Exchange procedures for addressing situations where the Exchange determines that the Short Sale Price Test for a covered security was triggered by a "clearly erroneous" execution as that term is defined in NYSE Arca Equities Rule 7.10.[6]

The Exchange also proposes to amend NYSE Arca Equities Rule 7.65, which applies to the Exchange's Portfolio Crossing Service ("PCS"), to exempt PCS transactions from the short sale price test restrictions contained in NYSE Arca Equities Rule 7.16(f). PCS short sale transactions would, however, be subject to the order marking and securities lending provisions of Paragraphs (a)–(e) of NYSE Arca Equities Rule 7.16. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.201.

[5] *See* notes 23–31 *infra* and accompanying text.

[6] *See infra* note 22 and accompanying text regarding "clearly erroneous" trades and proposed Rule 7.16(f)(iv)(A). The proposed rule amendment would, among other things, establish the duration of the Short Sale Price Test. *See* infra note 21 and accompanying text.

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

On February 26, 2010, the Commission adopted amendments to Rule 201.[7] Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,[8] imposes a short sale price test.[9] Amended Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.[10]

Rule 201(b) requires that trading centers,[11] including NYSE Arca, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid[12] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market[13] for the covered security as of the end of regular trading hours on the prior day ("Trigger Price").[14] In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[15]

In the Rule 201 Adopting Release, the Commission stated that it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline, and will facilitate the ability of long sellers to sell first upon such a decline.[16] The Commission further stated that this approach establishes a narrowly-tailored Rule that strikes an appropriate balance between its goal of preventing potential short sale abuses and the need to limit impediments to the normal operations of the market,[17] and as such, the Rule will help address the erosion of investor confidence in markets generally.[18] For these reasons, the Exchange seeks to amend its short sale rule to comply with the Commission's amendment of Rule 201.

Paragraph (f)(ii) of Rule 7.16, as proposed to be amended, makes clear that, in compliance with Rule 201, in the event a covered security experiences a decrease in price of 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day, except for certain permissible and "short exempt" orders,[19] Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid.

Where the Exchange is the listing market for a covered security, Exchange systems will determine whether the short sale price test restrictions of Rule 201 have been triggered (*i.e.,* whether a transaction in a covered security has occurred at a Trigger Price) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.[20] The Trigger Price of a covered security will not be calculated until the Exchange opens trading for that security. In circumstances where a covered security did not trade on the Exchange on the prior trading day (for example, due to a trading halt, trading suspension, or otherwise), the Exchange will base its determination of the Trigger Price on the last sale price on the Exchange for that security on the most recent day on which the security did trade.

Once a Short Sale Price Test is triggered by the listing market, the Short Sale Price Test will remain in effect until the close of trading on the next trading day.[21] If, however, the Exchange determines that the Short Sale Price Test for a covered security was triggered because of a clearly erroneous

[7] Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[8] The term "covered security" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

[9] 17 CFR 242.201(b).

[10] Rule 201 Adopting Release, 75 FR 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

[11] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[12] The term "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4). *See also* 17 CFR 242.600(b)(42).

[13] The term "listing market" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term "listing market" to have the same meaning as the term "listing market" as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). *See* also 17 CFR 242.201(a)(2).

[14] 17 CFR 242.201(b)(1)(i).

[15] 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Rule 201 Adopting Release, 75 FR 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.2 ("T&M FAQs").

[16] Rule 201 Adopting Release, 75 FR 11232.

[17] Rule 201 Adopting Release, 75 FR 11232, 11252.

[18] *See id.*

[19] *See* paragraphs (vi) and (vii) of proposed Rule 7.16(f) regarding the treatment of permissible and "short exempt" orders.

[20] 17 CFR 242.201(b)(3). *See also* Rule 201(a)(6) of Regulation SHO, which defines the term "plan processor" to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. *See* 15 U.S.C. 78c(a)(22).

[21] The Short Sale Price Test will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated. This may extend beyond regular trading hours. T&M FAQs, *supra* note 15, at Q&A 2.1.

execution,[22] the Exchange may lift the Short Sale Price Test before the Short Sale Period ends for securities for which the Exchange is the listing market or, for securities listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution. Similarly, if the Exchange determines that the prior day's closing price for a covered security for which the Exchange is the listing market is incorrect in Exchange systems and resulted in an incorrect determination that the short sale price test restriction had been triggered, the Exchange may correct the prior day's closing price and lift the Short Sale Price Test before the Short Sale Period ends.

During the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid ("Permitted Price") to permit their execution at a price that is compliant with the Short Sale Price Test. Consistent with Rule 201,[23] the Permitted Price for securities for which the national best bid is $1 or more is $.01 above the national best bid; the Permitted Price for securities for which the national best bid is below $1 is $.0001 above the national best bid.[24]

For displayed orders, the Exchange will continue to re-price a short sale order downward as the national best bid moves down but will not re-price upwards. For non-displayed orders, the Exchange will continue to re-price short sale orders both downward and upwards to reflect changes in the national best bid. The following are the pricing protocols during the Short Sale Period for specific order types that are not marked "short exempt":

(A) *Reject Option*—Individual short sale orders may be marked to be rejected back if entered while a symbol is subject to the Short Sale Price Test.

(B) *MPL Orders*—Mid-Point Passive Liquidity ("MPL") orders[25] will continue to be priced at the mid-point of the national best bid and national best offer, including situations where the mid-point is not one minimum price increment above the national best bid.[26]

(C) *Re-pricing of Marketable Orders*—All other marketable short sale orders will be re-priced at the Permitted Price. To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled.

(D) *Undisplayed Orders*—Short sale orders that are not displayable upon entry will be handled as follows by Exchange systems:

(*i*) Market orders and Passive Liquidity ("PL") orders[27] will be re-priced at a Permitted Price. Market orders and PL orders will continuously re-price at a Permitted Price as the national best bid moves both up and down.

(*ii*) PNP ("Post No Preference") Blind ("PNPB") orders[28] will be re-priced at a Permitted Price. PNPB orders are displayed once they are re-priced. PNPB orders will re-price down when the national best bid moves down but will not move up in price if the national best bid moves up and will instead remain at the price displayed.

(E) *IOC Orders*—Immediate or Cancel (IOC") orders,[29] requiring that all of part of the order be executed immediately, will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced.

(F) *PNP ISO Orders*—PNP Inter-market Sweep orders[30] are rejected if the price is at or below the current national best bid.

(G) *Short Sale Cross Orders*—Short sale cross orders[31] priced at or below the current national best bid will be rejected.

During the Short Sale Period, Exchange systems will execute and display a short sale order without regard to price if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid.[32] Un-displayed short sale orders that are entered into the Exchange's systems prior to the Short Sale Period will be re-priced as described above.

As permitted by Rule 201, during the Short Sale Period, Exchange systems will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price. Exchange systems will also accept orders marked "short exempt" at any time when such systems are open for order entry, regardless of whether the Short Sale Price Test has been triggered.[33]

During the Short Sale Period, re-priced PNP Blind, PL and MPL discretion orders will be ranked in the NYSE Arca Book[34] in time order. Market orders have priority over all other order types.

In addition, at any time sell orders may be cancelled and replaced as follows; (1) sell to sell short, (2) sell to sell short exempt, (3) sell short to sell, (4) sell short to sell short exempt, (5) sell short exempt to sell, and (6) sell short exempt to sell short. Orders modified will retain their priority in the NYSE Arca Book provided they are not increasing in volume or changing price.[35]

The Exchange is also proposing to amend 7.16(a) to define "short exempt" orders and to amend 7.16(b) and 7.16(c) to add language providing for "short exempt" marking in accordance with Rule 200(g) of Regulation SHO.[36]

Finally, the Exchange also proposes to amend NYSE Arca Equities Rule 7.65, which applies to the Exchange's PCS, to exempt PCS transactions from the short sale price test contained in NYSE Arca Equities Rule 7.16(f). PCS transactions occur after the 8 pm (Eastern time) close of the consolidated transaction reporting system and consolidated quotation dissemination. Accordingly, PCS transactions would not be subject to the short sale price test restrictions of Rule 201, as reflected in NYSE Arca Equities Rule 7.16, which apply only when the national best bid is calculated and disseminated.[37] PCS short sale transactions would, however, be subject to the order marking and securities lending provisions of Paragraphs (a)–(e) of NYSE Arca Equities Rule 7.16.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b)

[22] Determination of a "clearly erroneous" transaction will be made in accordance with Rule 7.10.

[23] Rule 201 Adopting Release, 75 FR 11232, 11247.

[24] *See* 17 CFR 242.612.

[25] NYSE Arca Equities Rule 7.31(h)(5). These orders will not be displayed or executed at the national best bid in locked markets.

[26] Exchange system handling of orders will comply with the pricing increment provisions of Rule 612 of Regulation NMS. *See* 17 CFR 242.612.

[27] NYSE Arca Equities Rule 7.31(h)(4).

[28] NYSE Arca Equities Rule 7.31(mm).

[29] NYSE Arca Equities Rule 7.31(e).

[30] NYSE Arca Equities Rule 7.31(w) and (jj).

[31] NYSE Arca Equities Rule 7.31(s).

[32] 17 CFR 242.201(b)(1)(iii)(A).

[33] Exchange systems will also follow the guidance in the T&M FAQs. *See supra* note 15.

[34] NYSE Arca Equities Rule 1.1 (definition of NYSE Arca Book).

[35] Cancelled and replaced orders that have been re-priced will not retain their priority in the NYSE Arca Book.

[36] 17 CFR 242.200(g)(2). Under Rule 200(g)(2), an order may be marked "short exempt" if the broker-dealer had a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d) of Regulation SHO or if it is entered during a Short Sale Period and meets the conditions specified in Rule 201(c) of Regulation SHO. *See* 17 CFR 242.201(d); 17 CFR 242.201(c); T&M FAQs, *supra* note 15, at Q&As 4.2, 5.4 and 5.5.

[37] *See* T&M FAQs, *supra* note 15, at Q&A 2.1.

of the Act,[38] in general, and furthers the objectives of Section 6(b)(5) of the Act,[39] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by establishing, maintaining and enforcing written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price restrictions established in that rule. To that end, the proposed rule change will, among other things, establish the Exchange's procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[42] and Rule 19b–4(f)(6)(iii) thereunder.[43]

A proposed rule change filed under Rule 19b–4(f)(6)[44] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[45] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[46] Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2011–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2011–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090. 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–2011–05 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4889 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6).

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[44] 17 CFR 240.19b–4(f)(6).

[45] 17 CFR 240.19b–4(f)(6)(iii).

[46] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63973; File No. SR–NYSE–2011–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 1600 (New York Block Exchange SM) To Add Provisions on Short Sales in Order To Implement the Provisions of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934

February 25, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 24, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1600 (New York Block Exchange SM) ("NYBX" or the "Facility") to add provisions on short sales in order to implement the provisions of Rule 201 of Regulation SHO ("Rule 201") [4] under the Act which, if triggered, imposes a restriction on the prices at which securities may be sold short ("Short Sale Price Test"). Among other things, Rule 201 requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day.[5] The proposed rule amendment would establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the Short Sale Price Test is triggered by a listing market (including the NYSE), including establishing what types of short sale orders will be re-priced to achieve a permitted price, in accordance with Rule 201, during the period in which a Short Sale Price Test is in effect ("Short Sale Period"). Amended Rule 1600 would also establish the Facility's procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt." Finally, the proposed rule amendment would also establish NYBX procedures for the execution, routing to the NYSE Display Book ("DBK") or routing to other automated trading centers of orders, if the listing market has lifted the Short Sale Price Test before the Short Sale Period has ended.[6] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201 of Regulation SHO.[7] Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,[8] imposes a short sale price test.[9] Amended Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.[10]

Rule 201(b) requires that trading centers,[11] including the NYSE, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid [12] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market [13] for the covered security as of the end of regular trading hours on the prior day ("Trigger Price").[14] In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.201.

[5] 17 CFR 242.201(b)(1)(i).

[6] The proposed rule amendment would establish the duration of the Short Sale Price Test. *See infra* note 21 and accompanying text. In addition, the proposed rule amendment would provide for an Exchange determination that a Short Sale Price Test has been triggered for covered securities for which the Exchange is the listing market.

[7] Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[8] The term "covered security" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

[9] 17 CFR 242.201(b).

[10] Rule 201 Adopting Release, 75 FR 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

[11] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[12] The term "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

[13] The term "listing market" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term "listing market" to have the same meaning as the term "listing market" as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). *See also* 17 CFR 242.201(a)(2).

[14] 17 CFR 242.201(b)(1)(i).

pursuant to an effective national market system plan.[15]

In the Rule 201 Adopting Release, the Commission stated that it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline, and will facilitate the ability of long sellers to sell first upon such a decline.[16] The Commission further stated that this approach establishes a narrowly-tailored Rule that strikes an appropriate balance between its goal of preventing potential short sale abuses and the need to limit impediments to the normal operations of the market,[17] and as such, the Rule will help address the erosion of investor confidence in markets generally.[18] For these reasons, the Exchange seeks to amend its short sale rule to comply with the Commission's amendment of Rule 201.

Paragraph (d)(5)(B) of the proposed rule makes clear that, in compliance with Rule 201, in the event a covered security experiences a decrease in price of 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day, the Facility will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid.

Where the Exchange is the listing market for a covered security, Exchange systems will determine, in accordance with NYSE Rule 440B(c),[19] whether the short sale price test restrictions of Rule 201 have been triggered (*i.e.,* whether a transaction in a covered security has occurred at a Trigger Price) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.[20]

Once a Short Sale Price Test is triggered by the listing market, the Short Sale Price Test will remain in effect until the close of trading on the next trading day.[21] If the listing market lifts the Short Sale Price Test before the Short Sale Period ends pursuant to the listing market's rules,[22] the Facility will execute, route to the DBK or route to other automated trading centers [23] in accordance with Rule 1600(d)(1), without regard to the Short Sale Price Test.

During the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by the Facility one minimum price increment above the current national best bid ("Permitted Price") to permit their execution at a price that is compliant with the Short Sale Price Test before being executed, routed to the DBK or rerouted to other automated trading centers,[24] unless, on an order-by-order basis, the NYBX User [25] has requested that an order be cancelled back to the User.[26] Consistent with Rule 201,[27] the Permitted Price for securities for which the national best bid is $1 or more is $.01 above the national best bid; the Permitted Price for securities for which the national best bid is below $1 is $.0001 above the national best bid.[28] To reflect declines in the national best bid, the Facility will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price.

With respect to NYBX pegging orders during the Short Sale Period, New York Block Exchange Market Pegging Orders, as defined in Rule 1600(c)(2)(A)(iii), to sell short at the national best bid will be re-priced, as described above, one minimum price increment above the current national best bid. In addition, during the Short Sale Period, any type of NYBX pegging order, as defined in Rule 1600(c)(2)(A) or Rules 1600(c)(2)(A)(i)–(iii), to sell short that contains an instruction to peg plus or minus the Exchange's minimum price variation will be rejected by Exchange systems.

As permitted by Rule 201, during the Short Sale Period, the Facility will execute, route to the DBK or route to other automated trading centers, in accordance with Rule 1600(d)(1), orders marked "short exempt" without regard to whether the order is at a Permitted Price.[29] The Facility will also accept orders marked "short exempt" at any time when such systems are open for order entry, regardless of whether the Short Sale Price Test has been triggered.[30]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[31] in general, and furthers the objectives of Section 6(b)(5) of the Act,[32] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO with respect to the operation of the Facility by establishing, maintaining and enforcing written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in that rule. To

[15] 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Rule 201 Adopting Release, 75 FR 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.2 ("T&M FAQs").

[16] Rule 201 Adopting Release, 75 FR 11232.

[17] Rule 201 Adopting Release, 75 FR 11232, 11252.

[18] *Id.*

[19] References are to revised Exchange Rule 440B, as proposed to be amended in a separate rule filing to, among other things, establish procedures for determining when the Short Sale Price Test is triggered for covered securities for which the Exchange is the listing market. *See* SR–NYSE–2011–05.

[20] 17 CFR 242.201(b)(3). *See also* Rule 201(a)(6) of Regulation SHO, which defines the term "plan processor" to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.201(a)(6); 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. 15 U.S.C. 78c(a)(22).

[21] Proposed Rule 1600(d)(5)(D). The Short Sale Price Test will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated. This may extend beyond regular trading hours. T&M FAQs, *supra* note 15, at Q&A 2.1.

[22] For example, Exchange Rule 440B, as proposed to be amended in SR–NYSE–2011–05, provides that the Exchange may lift the Short Sale Price Test if it determines that the Test was triggered by a "clearly erroneous" transaction. *See* proposed NYSE Rule 440B(d)(1).

[23] Exchange Rule 1600(b)(2)(A) provides that the term "automated trading center" shall have the meaning set forth in Rule 600(b)(4) of Regulation NMS. 17 CFR 242.600(b)(4).

[24] The price of such orders, as re-priced, will be used as the limit order price for purposes of calculating any Minimum Triggering Volume Quantity ("MTV") applicable to such orders. *See* Exchange Rule 1600(b)(2)(E) and (c)(3)(B)(ii)(I). *See* proposed Rule 1600(d)(5)(H).

[25] Exchange Rule 1600(b)(2)(J) (defining the term "User").

[26] *Id.*

[27] Rule 201 Adopting Release, 75 FR 11232, 11247.

[28] *See* 17 CFR 242.612.

[29] 17 CFR 242.201(b)(1)(iii)(B).

[30] 17 CFR 242.200(g)(2). Under Rule 200(g)(2), an order may be marked "short exempt" if the broker-dealer had a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d) of Regulation SHO or if it is entered during a Short Sale Period and meets the conditions specified in Rule 201(c) of Regulation SHO. *See* 17 CFR 242.201(d); 17 CFR 242.201(c); T&M FAQs, *supra* note 15, at Q&As 4.2, 5.4 and 5.5.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

that end, the proposed rule change will, among other things, establish the Facility's procedures regarding the execution, routing to the DBK and routing to other automated trading centers of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [33] and Rule 19b–4(f)(6) thereunder.[34] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [35] and Rule 19b–4(f)(6)(iii) thereunder.[36]

A proposed rule change filed under Rule 19b–4(f)(6) [37] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[38] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[39] Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–07. 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. Copies of the filing will also be available for inspection and copying at the NYSE'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–NYSE–2011–07 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4891 Filed 3–3–11; 8:45 am]

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[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 15 U.S.C. 78s(b)(3)(A)(iii).

[36] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 17 CFR 240.19b–4(f)(6).

[38] 17 CFR 240.19b–4(f)(6)(iii).

[39] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63975; File No. SR–BX–2011–010]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt New Rule 4763 Regarding Short Sales

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 February 18, 2011, NASDAQ OMX BX LLC ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 [4] thereunder, proposes to adopt new Rule 4763 as a written policy or procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.[5] BX proposes to implement these changes no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rules 200(g) and 201 of Regulation SHO.[6] The amendments became effective on May 10, 2010, and compliance is required by February 28, 2011.[7] The amendments to Rule 201 of Regulation SHO require trading centers [8] such as BX to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.[9] BX is proposing to adopt new Rule 4763 as a written policy and procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.

Proposed Rule 4763(a) defines the terms "covered security," "listing market," and "national best bid" as having the same meaning as such terms have in Rule 201 of Regulation SHO.[10]

Under Proposed Rule 4763(b), entitled "Short Sale Price Test," the System [11] will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more from the security's closing price on the listing market as of the end of regular trading hours on the prior day ("Trigger Price").[12]

Under Proposed Rule 4763(c), Duration of Short Sale Price Test, once triggered by the listing market, the short sale price test restriction shall remain in effect until the next trading day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system,[13] as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period").

Under Proposed Rule 4763(d), Re-pricing of Orders during Short Sale Period, during a Short Sale Period, short sale orders that are limited to the current national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the current national best bid ("Permitted Price"). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders between the BX bid and offer at the time of receipt will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid. During the Short Sale Period, immediate or cancel ("IOC") orders requiring that all or part of the order be executed immediately will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced. Inter-market sweep orders not marked "short exempt" will be handled in the same manner as IOC orders.

Pursuant to Proposed Rule 4763(e), Execution of Permissible Orders During Short Sale Period, during the Short Sale Period, the System will execute and display a short sale order without regard to whether the order is at a Permitted Price or higher if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. This determination is consistent with Rule 201(b)(1)(iii)(A) of Regulation SHO.[14] Short sale orders that are entered into the System prior to the Short Sale Period but that are not displayed will be re-priced as described in Proposed Rule 4763(d) as set forth above.

Finally, under Proposed Rule 4763(f), Short Exempt Orders, during the Short Sale Period, the System will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price or higher.[15] The System will accept orders marked "short exempt" at any time when the System is open for order entry regardless of whether the short sale price test has been triggered in the covered security. BX member firms marking orders "short exempt" in reliance on Rule 201(c) or 201(d) are responsible for ensuring that any such orders meet the criteria of these provisions and are accurately marked as "short exempt." [16]

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[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] 17 CFR 242.200(g); 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Adopting Release") (amending Rules 201 and 200 of Regulation SHO to adopt a short sale price test restriction and "short exempt" marking requirement). *See also* Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010) (extending the compliance date of the amendments to Rules 201 and 200 of Regulation SHO until February 28, 2011).

[6] *See supra* note 5.

[7] *Id.*

[8] Rule 201(a)(9) states the term "trading center" will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[9] *See* 17 CFR 242.201(b). The amendments to Rule 200(g) of Regulation SHO provide a "short exempt" marking requirement. *See* 17 CFR 242.200(g).

[10] *See* Rule 201(a) of Regulation SHO. The System will utilize the national best bid from the systems information processor. Rule 201(a)(1) defines "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. 17 CFR 242.201(a)(1). Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." 17 CFR 242.600(b)(47). Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.600(b)(46).

[11] *See* BX Rule 4751(a). The term "System" shall mean the automated system for order execution and trade reporting owned and operated by BX.

[12] *See* Rule 201(b)(1)(i) of Regulation SHO. Such execution or display needs to be in compliance with applicable rules concerning minimum pricing increments. *See* 17 CFR 242.612.

[13] *See* 17 CFR 242.201(b)(1)(ii). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.1.

[14] *See* 17 CFR 242.201(b)(1)(iii)(A).

[15] *See* 17 CFR 242.201(b)(1)(iii)(B).

[16] *See* Rules 200(g)(2), 201(c) and 201(d) of Regulation SHO. *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 5.4 and 5.5.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[17] which requires, among other things, the rules of an exchange to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act [18] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it implements rules adopted by the Commission in Regulation SHO under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BX has requested that the Commission waive the 30-day operative delay so that it may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change, among other things, implements the amendments to Rules 200(g) and 201 of Regulation SHO which have a February 28, 2011 compliance date.[23] For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–010 on the subject line.

Paper Comment

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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–BX–2011–010 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4893 Filed 3–3–11; 8:45 am]

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[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] *Id.*

[23] *See supra* note 5.

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63977; File No. SR–NYSE–2011–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Rule 440B (Short Sales) in Order To Implement the Provisions of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934

February 25, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 24, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 440B (Short Sales) in order to implement the provisions of Rule 201 of Regulation SHO ("Rule 201") [4] under the Act which, if triggered, imposes a restriction on the prices at which securities may be sold short ("Short Sale Price Test"). Among other things, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. The proposed rule amendment would establish procedures for the Exchange, as a listing market, to determine that a Short Sale Price Test has been triggered for a covered security. The proposed rule amendment would also establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the Short Sale Price Test is triggered, including establishing what types of short sale orders will be re-priced to achieve a permitted price, in accordance with Rule 201, during the period in which a Short Sale Price Test is in effect ("Short Sale Period").[5] Amended Rule 440B would also establish the Exchange's procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt." Further, the proposed rule amendment would establish the Exchange's procedures regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions. The proposed rule amendment would also make minor technical changes to the Supplementary Material to Rule 440B.[6] Finally, the proposed rule amendment would also establish Exchange procedures for addressing situations where the Exchange determines that the Short Sale Price Test for a covered security was triggered by a "clearly erroneous" execution as that term is defined in NYSE Rule 128.[7]

The Exchange also proposes to amend its Rule 900 (Off-Hours Trading: Applicability and Definitions) to apply Rule 440B (including the short sale price test restrictions of Rule 201) to transactions in the Off-Hours Trading Facility (by deleting the current exclusion for Rule 440B). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.[8] Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,[9] imposes a Short Sale Price Test.[10] Amended Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.[11]

Rule 201(b) requires that trading centers,[12] including the NYSE, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid [13] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market [14] for the covered security as of the end of regular trading hours on the prior day ("Trigger Price").[15] In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[16]

[4] 17 CFR 242.201.

[5] *See* notes 24–26 *infra* and accompanying text.

[6] Supplementary Material to Rule 440B is proposed to be amended to (a) delete an incorrect reference to Rule 440B(c) (in .11) and (b) to permit orders to be marked "short exempt" in accordance with Rules 200(g)(2) and 201 of Regulation SHO (in .12). The remaining provisions in Supplementary Material are not proposed to be modified and will remain in effect.

[7] *See infra* note 23 and accompanying text regarding "clearly erroneous" trades and proposed Rule 440B(d)(1). The proposed rule amendment would establish the duration of the Short Sale Price Test. *See infra* note 22 and accompanying text. In addition, the proposed rule amendment would provide for an Exchange determination that a Short Sale Price Test has been triggered for covered securities for which the Exchange is the listing market. *See infra* notes 21–22 and accompanying text.

[8] Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[9] The term "covered security" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

[10] 17 CFR 242.201(b).

[11] Rule 201 Adopting Release, 75 FR 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

[12] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[13] The term "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

[14] The term "listing market" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term "listing market" to have the same meaning as the term "listing market" as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). See also 17 CFR 242.201(a)(2).

[15] 17 CFR 242.201(b)(1)(i).

[16] 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at

In the Rule 201 Adopting Release, the Commission stated that it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline, and will facilitate the ability of long sellers to sell first upon such a decline.[17] The Commission further stated that this approach establishes a narrowly-tailored Rule that strikes an appropriate balance between its goal of preventing potential short sale abuses and the need to limit impediments to the normal operations of the market,[18] and as such, the Rule will help address the erosion of investor confidence in markets generally.[19] For these reasons, the Exchange seeks to amend its short sale rule to comply with the Commission's amendment of Rule 201.

Paragraph (b) of the proposed rule makes clear that, in compliance with Rule 201, in the event a covered security experiences a decrease in price of 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day, except for certain permissible and short exempt orders,[20] Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid.

Where the Exchange is the listing market for a covered security, Exchange systems will determine whether the short sale price test restrictions of Rule 201 have been triggered (i.e., whether a transaction in a covered security has occurred at a Trigger Price) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.[21] The Trigger Price of a covered security will not be calculated until the Exchange opens trading for that security. In circumstances where a covered security did not trade on the Exchange on the prior trading day (for example, due to a trading halt, trading suspension, or otherwise), the Exchange will base its determination of the Trigger Price on the last sale on the Exchange for that security on the most recent day on which the security did trade.

Once a Short Sale Price Test is triggered by the listing market, the Short Sale Price Test will remain in effect until the close of trading on the next trading day.[22] If, however, the Exchange determines that the Short Sale Price Test for a covered security was triggered because of a clearly erroneous execution,[23] the Exchange may lift the Short Sale Price Test before the Short Sale Period ends for securities for which the Exchange is the listing market or, for securities listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution. Similarly, if the Exchange determines that the prior day's closing price for a covered security for which the Exchange is the listing market is incorrect in Exchange systems and resulted in an incorrect determination that the short sale price restriction had been triggered, the Exchange may correct the prior day's closing price and lift the Short Sale Price Test before the Short Sale Period ends.

During the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid ("Permitted Price") to permit their execution at a price that is compliant with the Short Sale Price Test. Consistent with Rule 201,[24] the Permitted Price for securities for which the national best bid is $1 or more is $.01 above the national best bid; the Permitted Price for securities for which the national best bid is below $1 is $.0001 above the national best bid.[25]

To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.[26] Also, during the Short Sale Period, immediate or cancel ("IOC") orders will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced. Inter-market sweep orders not marked "short exempt" will be handled in the same manner as IOC orders.[27] In addition, during the Short Sale Period, Exchange systems will mark certain designated market maker ("DMM") sale interest as "long" or "short" on behalf of the DMM unit based on position information provided by the DMM unit.[28] For such DMM interest, after a security has opened for trading, Exchange systems (i) will not execute or display such DMM short sale interest[29] that is priced at or below the current national best bid and will cancel any such DMM interest, and (ii) will cancel any such DMM interest if the execution

least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. See Rule 201 Adopting Release, 75 FR 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.2 ("T&M FAQs").

[17] Rule 201 Adopting Release, 75 FR 11232.

[18] Rule 201 Adopting Release, 75 FR 11232, 11252.

[19] *Id.*

[20] *See* paragraphs (f) and (g) of proposed Rule 440B regarding the treatment of permissible and short exempt orders.

[21] 17 CFR 242.201(b)(3). *See also* Rule 201(a)(6) of Regulation SHO, which defines the term "plan processor" to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. *See* 15 U.S.C. 78c(a)(22).

[22] The Short Sale Price Test will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated. This may extend beyond regular trading hours. T&M FAQs, *supra* note 16, at Q&A 2.1.

[23] Determination of a "clearly erroneous" transaction will be made in accordance with Exchange Rule 128.

[24] Rule 201 Adopting Release, 75 FR 11232, 11247.

[25] 17 CFR 242.612.

[26] The following example illustrates the operation of Exchange systems in this situation. Assume the national best bid is 10.10 and a sell short order priced at 10.10 arrives at the Exchange during the Short Sale Period. The order will be re-priced to 10.11 and will rest on the limit order book. The national best bid then rises to 10.11. If that short sale order was displayed on the offer side, that order will remain priced at 10.11. *See* note 30 *infra* and accompanying text. If the order was not displayed at the customer's instruction, then the order will be re-priced to 10.12 because it cannot be executed at the national best bid. *See* T&M FAQs, *supra* note 16, at Q&A 4.1.

[27] *See* Exchange Rule 13 for the definition of inter-market sweep order.

[28] Under Rule 200(g) of Regulation SHO, broker-dealers are responsible for proper marking of orders. However, with respect to certain trading by DMM units, Exchange systems will monitor DMM unit positions on a real-time basis during the trading day and will be responsible for order marking on behalf of DMM units for certain trading entered through Exchange systems. This will be done by receiving a position report prior to the opening of trading and updating DMM unit positions based on position information provided by the DMM unit and/or Exchange trade executions during the day. DMM units will be responsible for properly marking any DMM interest entered into Exchange systems for which the Exchange does not monitor or update the DMM unit's position. Exchange systems will treat such DMM interest that is marked short the same as how it treats other interest, as provided for in proposed Rule 440B(e), and will not cancel such DMM interest as provided for in proposed Rule 440B(e)(2).

[29] *See* Exchange Rules 104(b) and 1000 regarding DMM trading algorithms and automatic execution.

of the full amount of all DMM sell interest at a price at or below the national best bid would result in a change in the DMM position from long to short.

During the Short Sale Period, Exchange systems will execute and display a short sale order without regard to price if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid.[30] Un-displayed short sale orders that are entered into the Exchange's systems prior to the Short Sale Period will be re-priced as described above.

As permitted by Rule 201, during the Short Sale Period, Exchange systems will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price.[31] Exchange systems will also accept orders marked "short exempt" at any time when such systems are open for order entry, regardless of whether the Short Sale Price Test has been triggered.[32]

In addition, the proposed amendments to Rule 440B will also provide for calculation of the Permitted Price and re-pricing of short sale orders with respect to any single-priced opening, re-opening or closing transaction during the Short Sale Period. Paragraph (h) of Rule 440B, as proposed, would provide that, with respect to the execution of short sale orders in a covered security in any single-priced opening, re-opening or closing transaction during the Short Sale Period, Exchange systems will re-price short sale orders in a covered security as follows: (1) Opening—one minimum price increment above the national best bid at 9:30 a.m.; (2) Re-opening following a halt or pause in trading—one minimum price increment above the last published Exchange bid prior to such halt or pause; and (3) Closing—one minimum price increment above the last published Exchange bid prior to the close.[33] For purposes of paragraph (h) the term "minimum price increment" shall mean $.01 for securities for which the national best bid or the published Exchange bid, as the case may be, is $1 or more, and $.0001 for securities for which the national best bid or the published Exchange bid, as the case may be, is below $1.

Paragraph (h) of Rule 440B, as proposed, also provides that, during a Short Sale Period, Exchange systems will not execute a short sale order for a covered security in a single-priced opening transaction at or below the national best bid at 9:30 a.m.,[34] and will not execute a short sale order for a covered security in a single-priced re-opening or closing transaction at or below the last published Exchange bid prior to a halt or pause in trading (in the case of a single-priced re-opening transaction), or at or below the last published Exchange bid prior to the close (in the case of a single-priced closing transaction).

The Exchange is also proposing changes to the Supplementary Material to Rule 440B. First, in .11, the Exchange is proposing to delete an outdated reference to Rule 440B(c). Second, the Exchange is proposing to amend .12 to add language permitting orders to be marked "short exempt" in accordance with Rule 200(g)(2) and Rule 201 of Regulation SHO. Under amended .12, an order may be marked "short exempt" if the broker-dealer had a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d) of Regulation SHO.[35] An order may also be marked "short exempt" if it is entered during a Short Sale Period and meets the conditions specified in Rule 201(c) of Regulation SHO.[36]

Finally, the Exchange also proposes to amend its Rule 900 regarding its Off-Hours Trading Facility to apply Rule 440B (including the short sale price test restrictions of Rule 201) to transactions in the Off-Hours Trading Facility (by deleting the current exclusion for Rule 440B). An obsolete reference to the Intermarket Trading System ("ITS") in Rule 900(b) will also be deleted.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[37] in general, and furthers the objectives of Section 6(b)(5) of the Act,[38] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by establishing, maintaining and enforcing written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the Short Sale Price Test established in that rule. To that end, the proposed rule change will, among other things, establish the Exchange's procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[39] and Rule 19b–4(f)(6) thereunder.[40] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[41] and Rule 19b–4(f)(6)(iii) thereunder.[42]

A proposed rule change filed under Rule 19b–4(f)(6)[43] normally does not

[30] *See also* 17 CFR 242.201(b)(1)(iii)(A).

[31] *See also* 17 CFR 242.201(b)(1)(iii)(B).

[32] Exchange systems will also follow the guidance in the T&M FAQs. *See supra* note 16.

[33] *See* Letter from James Brigagliano, Deputy Director, Division of Trading & Markets, SEC, to Janet McGinness, Senior Vice President and Secretary, NYSE Euronext, February 7, 2011.

[34] Short sale orders designated for execution only at the opening will be cancelled if not executed at the opening. Other short sale orders will remain on the Display Book for execution during the trading day if at a Permitted Price or higher and may be repriced throughout the day, consistent with proposed Rule 440B(e).

[35] 17 CFR 242.201(d); T&M FAQs, *supra* note 16, at Q&A 5.4.

[36] 17 CFR 242.201(c); *see also* T&M FAQs, *supra* note 16, at Q&A 4.2 and 5.5.

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78s(b)(3)(A)(iii).

[40] 17 CFR 240.19b–4(f)(6).

[41] 15 U.S.C. 78s(b)(3)(A)(iii).

[42] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[43] 17 CFR 240.19b–4(f)(6).

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[44] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[45] Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE'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–NYSE–2011–05 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4895 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 240.19b–4(f)(6)(iii).

[45] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63985; File No. SR–Phlx–2011–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Clarifying Changes to Rules 607 and 3202 Concerning the Application and Collection of the Covered Sale Fee

February 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make clarifying changes to Rules 607and 3202 concerning the application and collection of the Covered Sale Fee.

The text of the proposed rule change is available on the Exchange's Website at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 make clarifying changes to Rules 607 and 3202 concerning the application and collection of the Covered Sale Fee. In light of the varying means by which a Covered Sale Fee is incurred by members, as described below, the Exchange believes that a more detailed description of the circumstances that trigger the Covered Sale Fee is warranted. Accordingly, the new rule language proposed by the Exchange expressly discusses covered sales in both equity and option securities. In addition, the proposed new rule language includes a description of sell orders entered into the Exchange transaction execution systems that result in a covered sale on another exchange, expressly discussing the fee incurred by the Exchange and

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

[2] 17 CFR 240.19b–4.

the application of the Covered Sale Fee in such circumstances.

PHLX Rule 607

The Exchange is proposing amendments to Rule 607 to make clear the circumstances that trigger application of the Covered Sale Fee, and to make other clarifying changes. Initially, the Exchange is proposing to enumerate all paragraphs in Rule 607 for clarity. Furthermore, the Exchange proposes to amend paragraph two by removing the reference to Rule 185(g), the former equities platform rule regarding the Exchange's Routing Facility; and insert Rule 1080(m)(iii), the current options platform rule regarding the Exchange's Routing Facility. This amendment is predicated on the fact that upon the implementation of the Exchange's current equities platform, NASDAQ OMX PSX, [3] only options transactions may be routed to other markets for executions.

Rule 607 permits the Exchange to collect a fee from its members for sales of securities with respect to which the Exchange is obligated to pay a fee to the SEC pursuant to Section 31 of the Act [4] and Rule 31, thereunder.[5] Each national securities exchange and association is required to calculate the aggregate dollar amount of "covered sales" occurring on the exchange or through a member of the national securities association and to pay fees based on those covered sales to the Commission ("Section 31 fees"). A covered sale is a "sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange." [6] Pursuant to Rule 607 the Exchange assesses a member the Covered Sale Fee for an executed sell order entered into the Exchange's transaction execution systems that results in a covered sale. The Covered Sale Fee defrays the cost of the Section 31 fee triggered by the covered sale. In this regard, the Covered Sale Fee assessed a member is equal to the Section 31 fee assessed by the Commission for the covered sale. Further, the Exchange adjusts the Covered Sale Fee in lock step with changes to the Section 31 fee made by the Commission.[7] Assessing a sales fee is common practice among the national securities exchanges and associations.[8]

As noted above, the Covered Sale Fee defrays the cost of the Section 31 fee. The Covered Sale Fee is triggered by the fulfillment of a members [sic] sell order in equity or options securities entered into the Exchange transaction execution systems that results in a covered sale. If the member's sell order is fulfilled on the Exchange's equity or options trading markets, the Exchange incurs a Section 31 fee obligation. Sell orders in options securities entered into the Exchange transaction execution system that are routed to another market for execution, however, does [sic] not result in a covered sale on the Exchange. Execution of such routed orders is facilitated by the Exchange's routing broker,[9] which acts as the selling member for a routed order on the away market on behalf of the Exchange member. Such routed sell orders result in a covered sale on the away market, which incurs a Section 31 fee obligation. Like the Exchange, the away market assesses a sales fee on the member that entered the sell order, in this case Nasdaq Options Services LLC,[10] to defray the cost of the Section 31 fee obligation. In turn, the Exchange assesses its member, the original selling party, a Covered Sale Fee pursuant to Rule 607 to defray the cost of the Section 31 fee passed on by the away exchange pursuant to its sales fee. As such, the Exchange's Covered Sale Fee offsets the sales fee it is assessed by the away market, the result of which is to place the parties involved in the transaction in the same position as if the covered sale had occurred on the Exchange.

Additionally, the Exchange is updating its rules to indicate that the Covered Sale fee is collected by "designated clearing agency," which is defined by rule promulgated under the Act as a "clearing agency registered under section 17A of the Act * * * that clears and settles covered sales or covered round turn transactions." [11] The Exchange employs the National Security Clearing Corporation to collect the Covered Sale Fee from members arising from their covered sales in equity securities. Covered Sale Fees arising from options covered sales, however, are collected from members by the Options Clearing Corporation, another designated clearing agency that clears option securities.[12] The Exchange believes such amendment will more accurately reflect all parts the Exchange employs to collect the Covered Sale Fee from its members.

PHLX Rule 3202

The Exchange also proposes to amend its equity rules to clarify application and collection of the Covered Sale Fee. PHLX Rule 3202 sets forth that certain rules of the Exchange are applicable to market participants trading on the Exchange's equity trading platform. PHLX Rule 607 is cross referenced within Rule 3202, however Rule 3202 only references the first paragraph of Rule 607. For clarification, Rule 3202 will be amended to indicate that Rule 607 will be referenced in its entirety. Such amendment serves to describe the full process for collection of the Covered Sale Fee regarding equity transactions.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [13] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed clarifying language does not change the application and assessment of the Covered Sale Fee under the rule, but rather provides greater detail on the transactions that trigger the fee. The Exchange applies Rule 607 uniformly to all members' sell orders entered into the Exchange's transaction execution systems resulting in covered sales.

The Exchange also believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general and with Section 6(b)(5) of the Act,[15] in particular, which requires that the rules of an exchange be designed to 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,

[3] *See* Exchange Rules 3000–3407.

[4] 15 U.S.C. 78ee.

[5] 17 CFR 240.31.

[6] 17 CFR 240.31(a)(6).

[7] The Exchange issues Regulatory Alerts to provide members with notice of Covered Sale Fee changes. *See e.g.,* **http://www.nasdaqtrader.com/TraderNews.aspx?id=ERA2011–01.**

[8] *See e.g.,* CBOE Fees Schedule (January 3, 2011), Item 6 "Sales Value Fee," ISE Rule 212, NYSE Rule 440H, and NYSE Amex Rule 393.

[9] Nasdaq Options Services LLC is the Exchange's routing broker for option securities. *See* PHLX Options Rule 1080(m)(iii).

[10] *See* e-mail from Arlinda Clark, Assistant General Counsel, Phlx, to Jennifer Dodd, Special Counsel, Office of Market Supervision, Division of Trading and Markets, Commission, dated February 22, 2011 (requesting corrections to this sentence).

[11] 17 CFR 240.31(a)(9).

[12] In addition to clearing transactions in options, the Options Clearing Corporation also clears security futures. *See http://www.optionsclearing.com.*

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these requirements because the proposed amended rule text provides members with more detail regarding the circumstances under which the Exchange assesses a Covered Sale Fee. As such, the proposed changes will help avoid member confusion and foster better understanding of the application of the rule. Accordingly, the Exchange believes the proposed rule change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Because the foregoing proposed rule change establishes or changes a due, fee or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(2) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–Phlx–2011–23 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4903 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63984; File No. SR–NASDAQ–2011–027]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Clarifying Changes to Rule 7002 Concerning the Application and Collection of the Sales Fee

February 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 16, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to make clarifying changes to Rule 7002 concerning the application and collection of the Sales Fee.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

7002. Sales Fee

A Sales Fee is assessed by Nasdaq to each member for sales of securities through Nasdaq transaction execution systems *in the following circumstances:*

(a) When a sale in equity securities occurs with respect to which Nasdaq is obligated to pay a fee to the SEC under Section 31 of the Act;

(b) When a sale in option securities occurs with respect to which Nasdaq is obligated to pay a fee to the SEC under Section 31 of the Act;

(c) When a sell order in equity securities is routed for execution at a market other than Nasdaq, resulting in a covered sale on that market and an obligation of the routing facility of Nasdaq to pay the related sales fee of that market;

(d) When a sell order in option securities is routed for execution at a market other than the Nasdaq Options Market, resulting in a covered sale on that market and an obligation of the

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

[2] 17 CFR 240.19b–4.

routing facility of Nasdaq to pay the related sales fee of that market; [with respect to which Nasdaq is obligated to pay a fee to the SEC under Section 31 of the Act.] The Sales Fee is collected indirectly from members through their clearing firms by *a designated clearing agency, as defined by the Act,* [NSCC] on behalf of Nasdaq. The amount of the Sales Fee is equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales resulting from transactions through Nasdaq transaction execution systems during any computational period.

* * * * *

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 amendments to Rule 7002 to make clear the circumstances that trigger application of the Sales Fee, and to make other clarifying changes. Rule 7002 permits NASDAQ to collect a fee from its members for sales of securities through NASDAQ transaction execution systems with respect to which NASDAQ is obligated to pay a fee to the SEC pursuant to Section 31 of the Act [3] and Rule 31, thereunder.[4] Each national securities exchange and association is required to calculate the aggregate dollar amount of "covered sales" occurring on the exchange or through a member of the national securities association and to pay fees based on those covered sales to the Commission ("Section 31 fees"). A covered sale is a "sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange." [5] Pursuant to Rule 7002, NASDAQ assesses a member the Sales Fee for an executed sell order entered into NASDAQ transaction execution systems that results in a covered sale. The Sales Fee defrays the cost of the Section 31 fee triggered by the covered sale. In this regard, the Sales Fee assessed a member is equal to the Section 31 fee assessed by the Commission for the covered sale. Further, NASDAQ adjusts the Sales Fee in lock step with changes to the Section 31 fee made by the Commission.[6] Assessing a sales fee is common practice among the national securities exchanges and associations.[7]

As noted above, the Sales Fee defrays the cost of the Section 31 fee. The Sales Fee is triggered by the fulfillment of a members [sic] sell order in equity or options securities entered into NASDAQ transaction execution systems that results in a covered sale. If the member's sell order is fulfilled on NASDAQ's equity or options trading markets, NASDAQ incurs a Section 31 fee obligation. Sell orders in equity or options securities entered into NASDAQ transaction execution systems that are routed to another market for execution, however, do not result in a covered sale on NASDAQ. Execution of such routed orders is facilitated by NASDAQ's routing brokers,[8] which act as the selling member for a routed order on the away market on behalf of the NASDAQ member. Such routed sell orders result in a covered sale on the away market, which incurs a Section 31 fee obligation. Like NASDAQ, the away market assesses a sales fee on the member that entered the sell order, in this case NASDAQ Execution Services or NASDAQ Options Services, to defray the cost of the Section 31 fee obligation. In turn, NASDAQ assesses its member, the original selling party, a Sales Fee pursuant to Rule 7002 to defray the cost of the Section 31 fee passed on by the away exchange pursuant to its sales fee. As such, NASDAQ's Sales Fee offsets the sales fee it is assessed by the away market, the result of which is to place the parties involved in the transaction in the same position as if the covered sale had occurred on NASDAQ.

In light of the varying means by which a Sales Fee is incurred by members, as described above, NASDAQ believes that a more detailed description of the circumstances that trigger the Sales Fee is warranted. Accordingly, the new rule language proposed by NASDAQ expressly discusses covered sales in both equity and option securities. In addition, the proposed new rule language includes a description of sell orders entered into NASDAQ transaction execution systems that result in a covered sale on another exchange, expressly discussing the fee incurred by NASDAQ and the application of the Sales Fee in such circumstances.

NASDAQ also proposes deleting reference to the NSCC as the party that collects the Sales Fee and replacing it with the term "designated clearing agency," which is defined by rules promulgated under the Act as a "clearing agency registered under section 17A of the Act * * * that clears and settles covered sales or covered round turn transactions.") [9] NASDAQ is adopting the term "designated clearing agency" because it encompasses a broader range of clearing agencies than is currently noted under the rule. In this regard, Rule 7002 discusses the process by which the Sales Fee is collected from members for equity covered sales, noting that the fee is collected indirectly from members through their clearing firms by NSCC. NSCC is a designated clearing agency that clears transactions in equity securities. NASDAQ employs NSCC to collect the Sale Fee from members arising from their covered sales in equity securities. Sales Fees arising from options covered sales, however, are collected from members by the Options Clearing Corporation, another designated clearing agency that clears option securities.[10] Consistent with the other changes proposed herein, NASDAQ believes the rule should be updated to more fully describe the parties and processes involved in collection of the Sales Fee. Accordingly, NASDAQ proposes to use a term defined by the rules promulgated under the Act,[11] which most accurately reflects all parties NASDAQ employs to collect the Sales Fee from its members.

[3] 15 U.S.C. 78ee.

[4] 17 CFR 240.31.

[5] 17 CFR 240.31(a)(6).

[6] NASDAQ OMX issues Regulatory Alerts to provide its equities and options markets' members with notice of Sales Fee changes. *See e.g., http://www.nasdaqtrader.com/TraderNews.aspx?id=ERA2011–01.*

[7] *See e.g.,* CBOE Fees Schedule (January 3, 2011), Item 6 "Sales Value Fee," ISE Rule 212, NYSE Rule 440H, and NYSE Amex Rule 393.

[8] NASDAQ Execution Services and NASDAQ Options Services are NASDAQ's routing brokers for equity and option securities, respectively. *See* Rule 4758(b) and NOM Rules Chapter VI, Section 11(e).

[9] 17 CFR 240.31(a)(9).

[10] In addition to clearing transactions in options, the Options Clearing Corporation also clears security futures. *See http://www.optionsclearing.com.*

[11] *Supra* note 9.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed clarifying language does not change the application and assessment of the Sales Fee under the rule, but rather provides greater detail on the transactions that trigger the fee and the process by which the fee is collected. NASDAQ applies Rule 7002 uniformly to all members' sell orders entered into NASDAQ's transaction execution systems resulting in covered sales.

NASDAQ also believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general and with Section 6(b)(5) of the Act,[14] in particular, which requires that the rules of an exchange be designed to 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 mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. NASDAQ believes that the proposed rule change is consistent with these requirements because the proposed amended rule text provides members with more detail regarding the circumstances under which NASDAQ assesses a Sales Fee, and the process by which the fee is collected. As such, the proposed changes will help avoid member confusion and foster better understanding of the application of the rule. Accordingly, NASDAQ believes the proposed rule change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(2) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–NASDAQ–2011–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–027. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–027, and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4901 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

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

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63989; File No. SR–EDGX–2011–04]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rules 11.5, 11.9, and 11.15 To Make Certain Changes Consistent With the Upcoming Implementation of Amendments to Regulation SHO

February 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 25, 2011 the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have

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

[2] 17 CFR 240.19b–4.

been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rules 11.5, 11.9, and 11.15 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO.[3] The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201,[4] pursuant to which, among other things, short sale orders in covered securities[5] generally cannot be executed or displayed by a trading center[6] such as EDGX at a price that is at or below the current national best bid ("NBB")[7] when a short sale circuit breaker is in effect for the covered security (the "short sale price test restriction").[8] In anticipation of the upcoming February 28, 2011 compliance date for Rule 201, the Exchange is proposing to amend certain EDGX rules to describe the manner in which the System[9] will handle short sell orders when a short sale price test restriction is triggered under Rule 201 of Regulation SHO. These changes include establishing a definition for "short sale price sliding," which is a new form of price sliding[10] the Exchange proposes to offer when the amendments to Regulation SHO become operative, modifying certain EDGX rules regarding order execution and routing when a short sale price test restriction is in effect, and modifying EDGX rules related to order marking requirements.

The Exchange proposes to offer a new form of price sliding, short sale price sliding, which will be defined in EDGX Rule 11.5(c)(4). As a default, the Exchange will subject a User's[11] EDGX Only Orders to the short sale price sliding in proposed Rule 11.5(c)(4)(B) unless they affirmatively choose to opt-out of the process. As proposed, when a User opts out of the short sale price sliding process, any short sale order that could not be executed or displayed due to a short sale price test restriction would be rejected or cancelled by the Exchange upon entry or while resting on the order book, respectively. When a User's EDGX Only Order is subject to the short sale price sliding process, as proposed in Rule 11.5(c)(4)(B), if it cannot be executed or displayed at the time of entry due to a short sale price test restriction, it will be re-priced by the System to prevent execution or display at or below the current NBB to comply with Rule 201(b)(1)(i).[12] Any EDGX Only Order subject to such re-pricing by the System will be re-priced to display at one minimum price variation ("MPV") above the current NBB ("Permitted Price"). The order will receive a new timestamp when it is re-priced. Following the initial adjustment provided for in proposed Rule 11.5(c)(4)(B), the EDGX Only Order will, to reflect declines in the NBB, continue to be re-priced at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. The order will receive a new timestamp each time it is re-priced. Alternatively, following the initial adjustment provided for in Rule 11.5(c)(4)(B), the EDGX Only Order may, in accordance with the User's instructions, provided that in all cases the display of such lower prices does not violate Rule 201 of Regulation SHO: (i) Be re-priced one additional time to a price that is above the current NBB but equal to the NBB at the time the EDGX Only Order was received and receive a new timestamp; or (ii) not be adjusted further. In the event the NBB changes such that the price of a Non-Displayed Order, as defined in EDGX Rule 11.5(c)(8), subject to short sale price sliding would lock or cross the NBB, the Non-Displayed Order will receive a new timestamp, and will be re-priced by the System to a Permitted Price, again in compliance with Rule 201(b)(1)(i).[13]

As proposed, EDGX Only Orders marked "short exempt" will not be subject to short sale price sliding. Certain displayed short sale orders will not be re-priced by the System after entry because under Rule 201(b)(1)(iii)(A) a trading center's policies and procedures must be reasonably designed to permit the execution of short sale orders of covered securities that were displayed at a price above the current NBB at the time of initial display. "Short exempt" orders

[3] 17 CFR 242.200(g); 17 CFR 242.201.

[4] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of February 28, 2011. *See* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

[5] Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

[6] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[7] Rules 201(a)(4) defines the term "national best bid" to have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.600(b)(42).

[8] 17 CFR 242.201(b)(1). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 2.1 and 2.2 (concerning the duration of a short sale price test restriction).

[9] The "System" is defined in EDGX Rule 1.5(aa) as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

[10] The Exchange currently offers a process called "displayed price sliding process," as defined in current EDGX Rule 11.5(c)(4), which re-prices and/or displays orders at permissible prices when such orders would lock or cross Protected Quotations in a manner inconsistent with Rule 610(d) of Regulation NMS.

[11] A "User" is defined in EDGX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[12] Any execution or display will also need to be in compliance with applicable rules regarding minimum pricing increments. 17 CFR 242.612.

[13] *See* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 4.1 (concerning un-displayed orders).

also will not be re-priced by the System, but instead, the Exchange will execute, display and/or route such orders without regard to whether the order is at a price less than or equal to the NBB or any short sale price test restriction in effect under Regulation SHO, as described below.

The Exchange also proposes to amend its Rule 11.9 to make clear that it will execute, display and route an order consistent with Rule 201 of Regulation SHO, and that if it cannot do so, orders will be cancelled back to the applicable User. In addition, the Exchange proposes to make clear that it will not route orders away from the Exchange that are marked "short" if a short sale price test restriction is in effect for the covered security. Instead, such orders, if immediate-or-cancel ("IOC") will be cancelled, and all other orders will be posted to the EDGX Book,[14] treated as if they are EDGX Only Orders, as defined in Rule 11.5(c)(4), and subjected to the short sale price sliding process.[15]

Finally, current Rule 11.15 requires Users to identify short sale orders as "short" when entered into the System. The Exchange proposes to add the term "short exempt" to Rule 11.15 because pursuant to amended Rule 200(g) of Regulation SHO, a broker-dealer can mark a short sale order as either "short" or "short exempt."[16] The Exchange also proposes to make clear in Rule 11.15 that if an order it received is marked "short exempt," the Exchange will execute, display and/or route the order without regard to whether the order is at a price less than or equal to the NBB or any short sale price test restriction in effect under Regulation SHO.[17] The Exchange also proposes to make clear, as it does in Rule 11.5(d)(1) with respect to intermarket sweep orders, that it relies on a Member's[18] marking of an order, in this case the "short exempt" marking, when handling such order. Accordingly, proposed Rule 11.15 states that it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as "short exempt."[19]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[20] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[21] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Exchange believes that the proposed changes will provide clarity on the short sale order handling procedures employed by the Exchange and certain obligations of Members when sending short sale orders to the Exchange consistent with Regulation SHO, as amended. The Exchange also believes that the proposed short sale price sliding functionality will assist Users in executing or displaying their orders consistent with Regulation SHO, especially under fast moving conditions where the national best bid/offer is quickly updating. In addition, as is currently the case, the short sale price sliding process is optional to Users. Specifically, Users can choose to opt-out of the short sale price sliding process, and if they choose to do so, the Exchange will cancel back their orders when such orders contradict the provisions of Regulation SHO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6)(iii) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing.[25] However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiving the 30-day operative delay is consistent with the protection of the investors and the public interest because such waiver would ensure compliance with the Commission's amendments to Rules 200(g) and 201 of Regulation SHO. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[14] As defined in EDGX Rule 1.5(d).

[15] Like with an EDGX Only Order, a User can affirmatively choose to opt-out of the short sale price sliding process.

[16] 17 CFR 242.200(g)(2). Under Rule 200(g)(2), an order may be marked "short exempt" if the broker-dealer had a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d) of Regulation SHO or if it is entered during a Short Sale Period and meets the conditions specified in Rule 201(c) of Regulation SHO. *See* 17 CFR 242.201(d); 17 CFR 242.201(c); *See* Division of Trading & Markets: Responses to Frequently Asked Questions Nos. 4.2, 5.4 and 5.5.

[17] 17 CFR 242.201(b)(1)(iii)(B).

[18] A Member is defined in EDGX Rule 1.5(l) as any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[19] 17 CFR 242.200(g)(2). *See also* 17 CFR 242.201(c); 17 CFR 242.201(d). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 4.2, 5.4, and 5.5.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–EDGX–2011–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090, 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 and on its Internet Web site at *http://www.directedge.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–EDGX–2011–04 and should be submitted by March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4905 Filed 3–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63988; File No. SR–EDGA–2011–05]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rules 11.5, 11.9, and 11.15 to Make Certain Changes Consistent With the Upcoming Implementation of Amendments to Regulation SHO

February 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2011 the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rules 11.5, 11.9, and 11.15 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO.[3] The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201,[4] pursuant to which, among other things, short sale orders in covered securities[5] generally cannot be executed or displayed by a trading center[6] such as EDGA at a price that is at or below the current national best bid ("NBB")[7] when a short sale circuit breaker is in effect for the covered security (the "short sale price test restriction").[8] In anticipation of the upcoming February 28, 2011 compliance date for Rule 201, the Exchange is proposing to amend certain EDGA rules to describe the manner in

[28] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.200(g); 17 CFR 242.201.

[4] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of February 28, 2011. *See* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

[5] Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

[6] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[7] Rules 201(a)(4) defines the term "national best bid" to have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.600(b)(42).

[8] 17 CFR 242.201(b)(1). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 2.1 and 2.2 (concerning the duration of a short sale price test restriction).

which the System [9] will handle short sell orders when a short sale price test restriction is triggered under Rule 201 of Regulation SHO. These changes include establishing a definition for "short sale price sliding," which is a new form of price sliding [10] the Exchange proposes to offer when the amendments to Regulation SHO become operative, modifying certain EDGA rules regarding order execution and routing when a short sale price test restriction is in effect, and modifying EDGA rules related to order marking requirements.

The Exchange proposes to offer a new form of price sliding, short sale price sliding, which will be defined in EDGA Rule 11.5(c)(4). As a default, the Exchange will subject a User's [11] EDGA Only Orders to the short sale price sliding in proposed Rule 11.5(c)(4)(B) unless they affirmatively choose to opt-out of the process. As proposed, when a User opts out of the short sale price sliding process, any short sale order that could not be executed or displayed due to a short sale price test restriction would be rejected or cancelled by the Exchange upon entry or while resting on the order book, respectively. When a User's EDGA Only Order is subject to the short sale price sliding process, as proposed in Rule 11.5(c)(4)(B), if it cannot be executed or displayed at the time of entry due to a short sale price test restriction, it will be re-priced by the System to prevent execution or display at or below the current NBB to comply with Rule 201(b)(1)(i).[12] Any EDGA Only Order subject to such re-pricing by the System will be re-priced to display at one minimum price variation ("MPV") above the current NBB ("Permitted Price"). The order will receive a new timestamp when it is re-priced. Following the initial adjustment provided for in proposed Rule 11.5(c)(4)(B), the EDGA Only Order will, to reflect declines in the NBB, continue to be re-priced at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. The order will receive a new timestamp each time it is re-priced. Alternatively, following the initial adjustment provided for in Rule 11.5(c)(4)(B), the EDGA Only Order may, in accordance with the User's instructions, provided that in all cases the display of such lower prices does not violate Rule 201 of Regulation SHO: (i) Be re-priced one additional time to a price that is above the current NBB but equal to the NBB at the time the EDGA Only Order was received and receive a new timestamp; or (ii) not be adjusted further. In the event the NBB changes such that the price of a Non-Displayed Order, as defined in EDGA Rule 11.5(c)(8), subject to short sale price sliding would lock or cross the NBB, the Non-Displayed Order will receive a new timestamp, and will be re-priced by the System to a Permitted Price, again in compliance with Rule 201(b)(1)(i).[13]

As proposed, EDGA Only Orders marked "short exempt" will not be subject to short sale price sliding. Certain displayed short sale orders will not be re-priced by the System after entry because under Rule 201(b)(1)(iii)(A) a trading center's policies and procedures must be reasonably designed to permit the execution of short sale orders of covered securities that were displayed at a price above the current NBB at the time of initial display. "Short exempt" orders also will not be re-priced by the System, but instead, the Exchange will execute, display and/or route such orders without regard to whether the order is at a price less than or equal to the NBB or any short sale price test restriction in effect under Regulation SHO, as described below.

The Exchange also proposes to amend its Rule 11.9 to make clear that it will execute, display and route an order consistent with Rule 201 of Regulation SHO, and that if it cannot do so, orders will be cancelled back to the applicable User. In addition, the Exchange proposes to make clear that it will not route orders away from the Exchange that are marked "short" if a short sale price test restriction is in effect for the covered security. Instead, such orders, if immediate-or-cancel ("IOC") will be cancelled, and all other orders will be posted to the EDGA Book,[14] treated as if they are EDGA Only Orders, as defined in Rule 11.5(c)(4), and subjected to the short sale price sliding process.[15]

Finally, current Rule 11.15 requires Users to identify short sale orders as "short" when entered into the System. The Exchange proposes to add the term "short exempt" to Rule 11.15 because pursuant to amended Rule 200(g) of Regulation SHO, a broker-dealer can mark a short sale order as either "short" or "short exempt." [16] The Exchange also proposes to make clear in Rule 11.15 that if an order it received is marked "short exempt," the Exchange will execute, display and/or route the order without regard to whether the order is at a price less than or equal to the NBB or any short sale price test restriction in effect under Regulation SHO.[17] The Exchange also proposes to make clear, as it does in Rule 11.5(d)(1) with respect to intermarket sweep orders, that it relies on a Member's [18] marking of an order, in this case the "short exempt" marking, when handling such order. Accordingly, proposed Rule 11.15 states that it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as "short exempt." [19]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[20] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[21] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Exchange

[9] The "System" is defined in EDGA Rule 1.5(aa) as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

[10] The Exchange currently offers a process called "displayed price sliding process," as defined in current EDGA Rule 11.5(c)(4), which re-prices and/or displays orders at permissible prices when such orders would lock or cross Protected Quotations in a manner inconsistent with Rule 610(d) of Regulation NMS.

[11] A "User" is defined in EDGA Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[12] Any execution or display will also need to be in compliance with applicable rules regarding minimum pricing increments. 17 CFR 242.612.

[13] *See* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 4.1 (concerning un-displayed orders).

[14] As defined in EDGA Rule 1.5(d).

[15] Like with an EDGA Only Order, a User can affirmatively choose to opt-out of the short sale price sliding process.

[16] 17 CFR 242.200(g)(2). Under Rule 200(g)(2), an order may be marked "short exempt" if the broker-dealer had a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d) of Regulation SHO or if it is entered during a Short Sale Period and meets the conditions specified in Rule 201(c) of Regulation SHO. *See* 17 CFR 242.201(d); 17 CFR 242.201(c); *See* Division of Trading & Markets: Responses to Frequently Asked Questions Nos. 4.2, 5.4 and 5.5.

[17] 17 CFR 242.201(b)(1)(iii)(B).

[18] A Member is defined in EDGA Rule 1.5(l) as any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[19] 17 CFR 242.200(g)(2). *See also* 17 CFR 242.201(c); 17 CFR 242.201(d). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 4.2, 5.4, and 5.5.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

believes that the proposed changes will provide clarity on the short sale order handling procedures employed by the Exchange and certain obligations of Members when sending short sale orders to the Exchange consistent with Regulation SHO, as amended. The Exchange also believes that the proposed short sale price sliding functionality will assist Users in executing or displaying their orders consistent with Regulation SHO, especially under fast moving conditions where the national best bid/offer is quickly updating. In addition, as is currently the case, the short sale price sliding process is optional to Users. Specifically, Users can choose to opt-out of the short sale price sliding process, and if they choose to do so, the Exchange will cancel back their orders when such orders contradict the provisions of Regulation SHO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6)(iii) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing.[25] However, pursuant to Rule 19–b4(f)(6)(iii),[26] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiving the 30-day operative delay is consistent with the protection of the investors and the public interest because such waiver would ensure compliance with the Commission's amendments to Rules 200(g) and 201 of Regulation SHO. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–EDGA–2011–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090, 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 and on its Internet Web site at *http://www.directedge.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–EDGA–2011–05 and should be submitted by March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4904 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63983; File No. SR–NASDAQ–2011–032]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Market Data to the Public at No Charge

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 24, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange

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

[2] 17 CFR 240.19b–4.

Commission (the "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

NASDAQ is filing this proposed rule change to identify in NASDAQ Options Market ("NOM") rules the proprietary data feeds of NOM market information that NASDAQ makes available at no charge. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Chapter VI, Section 1(a)(3) of the NOM Rules currently states that the NOM trading system includes "a data feed(s) that can be used to display without attribution to Participants' MPIDs Displayed Orders on both the bid and offer side of the market for price levels then within the Nasdaq Options Market using the minimum price variation applicable to that security." NASDAQ is proposing to modify Section 1(a)(3) to specify the names and content of the four data feeds that NASDAQ makes available without charge containing market information related to trading on NOM.

First, NASDAQ ITCH to Trade Options or "ITTO" is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to "build" their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. The Order Imbalance Information disseminated via ITTO is described in more detail below.

Best of NASDAQ Options or "BONO" is a data feed that provides the NOM Best Bid and Offer and last sale information for trades executed on NOM. The NOM Best Bid and Offer and last sale information are identical to the information that NOM sends the Options Price Regulatory [sic] Authority ("OPRA") and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047.

NASDAQ Options Depth at Price or "DAP" is a data feed that provides aggregate quotation information for each price level of trading interest on the NOM book, last sale data for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. The summary of interest at each price level is useful to members that seek to add or remove liquidity at various depths of the NOM book but that do not build a book in the manner described above with respect to ITTO.

Finally, NASDAQ Options Net Order Imbalance or "NOIView" is a data feed that provides Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. Members use NOIView to participate effectively in the NOM Opening Cross. It includes the following information: (1) A Current Reference Price" [sic] which describes the trading interest on the NOM book at a given moment; (2) the number of contracts of eligible trading interest that are paired at the Current Reference Price; (3) the size of any order imbalance; (4) the buy/sell direction of any Imbalance; and (5) indicative prices at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time. NOIView is available in conjunction with the ITTO and DAP feeds described above.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general and with Sections 6(b)(5) of the Act,[4] 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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of more useful proprietary data and also by clarifying its availability to market participants.

Additionally, NASDAQ is making a voluntary decision to make this data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ chooses to make the data available as proposed in order to improve market quality, to attract order flow, and to increase transparency. Once this filing becomes effective, NASDAQ will be required to continue making the data available until such time as NASDAQ changes its rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, offering voluntary and free data feeds promotes competition among trading platforms by advertising available trading interest and enabling NOM to attract additional liquidity.

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.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[5] and paragraph (f)(6) of Rule 19b–4 thereunder,[6] in that 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 the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–032. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–032 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4900 Filed 3–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63981; File No. SR–Phlx–2011–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Amendments to NASDAQ OMX PHLX LLC's Limited Liability Company Agreement, By-Laws, Rules, Advices and Regulations

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on February 16, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to: (1) Amend the Limited Liability Company Agreement and By-Laws to substantially conform to NASDAQ Stock Market's [sic] Second Amended Limited Liability Company Agreement and By-Laws; (2) eliminate the Series A Preferred Shareholder and adopt NASDAQ Stock Market LLC's board structure and committees; (3) eliminate foreign currency option participations; (4) eliminate former definitions, rules and references to XLE; and (5) amend other terms, names, cross-references and make technical and grammatical changes to clarify and simplify the By-Laws, Rules, Option Floor Procedure Advices, Equity Floor Procedure Advices (collectively "Advices") and Regulations of the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Limited Liability Company Agreement ("LLC Agreement") By-Laws, Rules, Advices and Regulations to mirror that of the NASDAQ Stock Market LLC to create a more streamlined governance process, while also making other non-substantive conforming amendments, including technical amendments.

Limited Liability Company Agreement

The Exchange is proposing to amend the current LLC Agreement to a First Amended LLC Agreement. The Exchange has amended the recitals to state that the Board of Governors desires to eliminate the Series A Preferred Stock and amend and restate the LLC Agreement in its entirety.

In Section 1 titled Name; Conversion, the Exchange is proposing to delete paragraph 2 which references the recent conversion from a Delaware corporation to a Delaware limited liability company. This language was previously necessary to conform the old text to the limited liability company agreement Delaware Act requirements, but is no longer necessary in the amended and restated version of the LLC Agreement.

In Section 2, titled Principal Business Office, the Exchange is proposing to rename the Board of Governors the Board of Directors. The Exchange is proposing to utilize the same Board title as in the NASDAQ Stock Market LLC Agreement.[5] The Exchange proposes this amendment throughout the LLC Agreement.

In Section 4 titled Members, the Exchange is proposing to amend the language to refer to a single Stockholder and to eliminate language related to the recent LLC conversion and add language indicating that one Stockholder remains the same, The NASDAQ OMX Group, Inc.

Series A Preferred Share Elimination

The Exchange is proposing to amend the Exchange's formation documents to eliminate the Series A Preferred Share. The NASDAQ OMX Group, Inc. would be the only Shareholder of NASDAQ OMX PHLX LLC. In 2003, the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX LLC) filed with the Securities and Exchange Commission to amend its formation documents to form a demutualized Delaware stock corporation.[6] At that time, the Exchange amended its Certificate of Incorporation to designate one share of preferred stock as the "Series A Preferred Stock." The Series A Preferred Stock had the sole power to: (i) Select the On-Floor Governors, and (ii) remove the On-Floor Governors in accordance with specified procedures in connection with the removal of Governors.[7] Since that time, the Exchange's formation documents have been amended so that today, the Series A Preferred Stockholder is the sole preferred shareholder of the Exchange. The Series A Preferred Shareholder today elects the Member Governor and Designated Independent Governor pursuant to Section 16 of the LLC Agreement and Article IV of the By-Laws.

At the time of demutualization, a Trust Agreement was created and the Series A Preferred Stock was held by the Trust.[8] Pursuant to the Amended Trust Agreement, the Trustee of the Trust has the power to vote the share of Series A Preferred Stock with respect to the designated nominees, which includes the Member Governor and the Designated Independent Governor, as directed by the vote of the Member Organization Representatives of Member Organizations entitled to vote pursuant to Article III of the By-Laws.

The single share of the Series A Preferred Stock, issued to the Trust governed by the Amended Trust Agreement, is designed to facilitate the exercise by Members and Member Organizations of their rights to fair representation in the selection and removal of certain Governors of the Exchange and to facilitate the administration of the affairs of the Exchange in accordance with the Act. This voting arrangement, implemented through the Amended Trust Agreement and the Series A Preferred Stock, is designed to give "members" (as defined in Section 3(a)(3)(A) of the Act) a voice in the management of the Exchange. These arrangements were considered necessary at the time of demutualization for two reasons: (i) Under Delaware law, only stockholders can elect the directors of a Delaware corporation; and (ii) after the demutualization, Members and Member Organizations that were not Owners at the time of the demutualization were not stockholders of the Exchange. This is no longer the case. Today, the Exchange is a wholly-owned subsidiary of The NASDAQ OMX Group, Inc. Since the acquisition of the former Philadelphia Stock Exchange, Inc. by The NASDAQ OMX Group, Inc. there are no longer any other common shareholders of what is now known as NASDAQ OMX PHLX LLC. Also, the Exchange is no longer a corporation subject to Delaware corporate law.

The Exchange believes that its proposed board structure and election process, identical to that of the NASDAQ Stock Market LLC, would provide Members and Member Organizations fair representation in the selection and removal of certain Governors of the Exchange in accordance with the Act. The Exchange is not proposing to amend its By-Laws with respect to the nomination of Governors, now proposed to be Directors, which process is currently the same as that of NASDAQ Stock Market LLC. Rather, the Exchange is proposing to eliminate the mechanism that the Series A Preferred Stock was designed to facilitate. The Exchange would continue to accept nominations from Members and Member Organizations for certain Board positions which will be explained in greater detail below. The Exchange does not believe the Series A Preferred mechanism is necessary and therefore proposes to eliminate such mechanism in favor of the structure currently utilized by the NASDAQ Stock Market LLC.

In Section 5, titled Certificates, the Exchange proposes to change the title Board of Governors to Board of Directors. In Section 6, titled Purpose, the Exchange proposes to adopt the language that is contained in the formation documents of the NASDAQ Stock Market LLC.[9] In Section 7, titled Powers, the Exchange is proposing to change the title Board of Governors to Board of Directors.

In Section 8, titled Management, the Exchange is proposing to mirror the board structure of NASDAQ Stock Market LLC.[10] As previously stated, the Exchange proposes to rename the Board of Governors, the Board of Directors. The Directors shall remain "managers" within the meaning of the LLC Act without change. The authorized number

[5] *See* Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[6] *See* Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (Sr–Phlx–2003–73).

[7] *See* Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73).

[8] Currently, the Series A Preferred Stock is still held by the PHLX Member Voting Trust pursuant to a Third Amended and Restated Trust Agreement dated February 22, 2007 ("Amended Trust Agreement").

[9] *See* Section 7 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[10] *See* Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

of Directors shall be at the discretion of the Stockholder as opposed to the Board.[11]

The Exchange is proposing to add language to indicate that the Stockholder may determine at any time and in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Stockholder at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. This language mirrors that of the NASDAQ Stock Market LLC.[12]

The Exchange proposes, similar to NASDAQ Stock Market LLC, that at least twenty percent of the Directors shall be Member Representative Directors. All Directors other than the Member Representative Directors shall be elected by the Stockholder as described in the By-Laws, which will be discussed below. Currently, a number of Designated Independent Governors, together with the Member Governors, shall equal at least twenty percent of the total number of Governors who are elected by the Series A Preferred Shareholder.[13] The Exchange is not proposing to amend the process by which members may nominate candidates to the Board.[14] The process by which board members are elected is the same process that exists today for the NASDAQ Stock Market LLC.

Each Director elected, designated or appointed by the Stockholder shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal.[15] Similar to the NASDAQ Stock Market LLC provisions, each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all terms and conditions of the LLC Agreement and the By-Laws.[16] Also, a Director need not be a member of the Exchange.[17]

The Exchange is also proposing to adopt the exact verbiage of Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC with respect to Powers of the Board, the By-Laws, Meeting of the Board of Directors, Quorum; LLC Acts of the Board and Electronic Communications.[18] The section discussing Powers of the Board is similar to the current provisions in Article IV, Section 4–4 and Section 8(b) of the LLC Agreement in that the Board of Governors is currently vested with the ability to act for the management of the business and affairs of the Exchange. They also have the power to bind the Exchange and delegate powers.[19] The Exchange previously adopted its By-Laws.[20]

The Meetings of the Board are similar to the provision in By-Law Article IV, Sections 4–10, 4–11 and 4–14. The proposed quorum rules are similar to By-Law Article IV, Section 4–9 and 4–16. Electronic Communications are similar to By-Law Article IV, Section 4–22.

The Exchange proposes to amend its current Standing Committees at By-Law Article X and instead adopt Standing Committees similar to NASDAQ Stock Market LLC. Currently, the Standing Committees of the Exchange are: an Executive Committee, a Regulatory Oversight Committee, a Business Conduct Committee, a Nominating Committee, a Member Nominating Committee, a Quality of Markets Committee, and an Options Trade Review Committee, and may also include a Finance Committee and such other committees as the Board of Governors shall by resolution establish.

Each of such Committees is currently composed of not more than nine (9) members, including ex-officio members, except for the Options Trade Review Committee which may be composed of 20 members. Currently, the Chair of each Standing Committee must be a member of the Board of Governors and at least one other person on each Committee must be a Governor, except for the Options Trade Review Committee. All committee members are appointed by the Board of Governors.

Currently, all committee appointments are made as promptly as possible after each annual meeting of Stockholders, and each appointee serves for one year or until his successor is duly appointed. The members of the Options Trade Review Committee are appointed for terms of no more than three years, subject to reappointment by the Board.

The Exchange proposes to replace these rules with "Committees Composed Solely of Directors" and "Committees Not Composed Solely of Directors" at newly proposed and named Article V. The details of those committees shall be discussed below in the By-Law section.

The Exchange is proposing that the Board may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. The Committee members shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies shall be filled by the Board. Similar to By-Law Article X, Section 10–2, each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall be required to keep regular minutes of its meetings and report the same to the Board when required.

Similar to By-Law Article X, Section 10–3, a majority of the committee shall constitute a quorum and the vote of a majority present shall be an act of the committee. A new provision proposes to the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Further, in the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

Similar to By-Law Article IV, Section 4–5, the Compensation of Directors, Expenses shall be fixed by the Board. This language mirrors that of the NASDAQ Stock Market LLC.[21] The

[11] *See* By-Law Article IV, Section 4–1.

[12] *See* Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[13] *See* LLC Agreement at Section 8.

[14] Pursuant to newly renumbered proposed By-Law Article II, Section 2–1, an additional candidate may be added to the List of Candidates by a Member that submits a timely and duly executed written nomination to the Secretary of the Exchange. The Exchange provides Members procedures to nominate candidates at each annual meeting. *See* By-Law Article II, Section 2–1(a).

[15] *See* By-Law Article IV, Section 4–3, currently Governors are elected for one year.

[16] *See* Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[17] *See* Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[18] *See* proposed text at Section 8 of the Exchange's LLC Agreement at (b)–(f).

[19] *See* By-Law Article IV, Section 4–4.

[20] *See* LLC Agreement at Section 8(d).

[21] *See* Section 9 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

Removal and Resignation of Directors language is also identical to the NASDAQ Stock Market LLC and By-Law Article IV, Sections 4–4, 4–6 and the LLC Agreement at Section 8(f). The Directors as Agent language is currently contained in the Exchange's LLC Agreement at Section 8(e).

Section 9, titled Officers, the Exchange proposes to adopt the Appointment provisions of NASDAQ Stock Market LLC,[22] which provisions are similar in nature to the existing provisions of Section 9(a) of the LLC Agreement. The terms "Governor" would be replaced with "Director" in Section 9(c) and in Section 10, titled Limited Liability.

Section 11, titled Capital Contributions, the Exchange is reflecting the proposed elimination of the Series A Preferred Shareholder in the text. Section 12, titled Additional Contributions, the Exchange is revising the text to mirror that of the NASDAQ Stock Market LLC.[23] Section 13, titled Allocation of Profits and Losses, remains unchanged. Section 14, titled Distributions, the Exchange is once again mirroring the language of the NASDAQ Stock Market LLC.[24] The Distribution language is not altogether different from the existing language and will solely impact the Shareholder, The NASDAQ OMX Group, Inc. In Section 15, titled Books and Records, the Exchange substantially mirrors the language of NASDAQ Stock Market LLC except that the provision "within the United States" was added.[25]

Section 16, titled Reports, is new to the Exchange's LLC Act and is being added to mirror the language of the NASDAQ Stock Market LLC.[26] Section 17, titled Limited Liability Company Interests, the Exchange is removing the references to the Series A Preferred Shareholder as described herein. The Exchange is proposing language to cancel the existing Series A Preferred Stock. Section 18, titled Other Business, the Exchange is proposing to mirror the language of the NASDAQ Stock Market LLC.[27] The language is substantially similar to the language currently in Section 17.

Section 19, Exculpation and Indemnification, the Exchange is proposing to once again mirror the language of the NASDAQ Stock Market LLC.[28] The language is substantially similar to the language currently in Section 18. Section 19, titled Assignment, the Exchange proposes to allow assignments to affiliates of the member. The reference to Section 20 would be deleted. Section 21, titled Dissolution, is amended to mirror the language of the NASDAQ Stock Market LLC.[29] The language is substantially similar to the language currently in Section 21.

Section 22, titled Benefits of Agreement; No Third-Party Rights, seeks to eliminate references to the Series A Preferred Shareholder as described herein as does Section 25, titled Binding Agreement.[30] The Exchange is not proposing amendments to Sections 23, titled Severability of Provisions, 24, titled Entire Agreement or 26, titled Governing Law.

Minor amendments are proposed to Section 25, titled Binding Agreement, to account for only one proposed Stockholder. Section 27, titled Amendments, would be amended to mirror the language of the NASDAQ Stock Market LLC.[31] Section 28, titled Notices, would be amended to mirror the language of the NASDAQ Stock Market LLC.[32]

The Exchange proposes to add a new Schedule A to the LLC Agreement to define certain new terms, namely: "LLC Act", "Affiliate", "Agreement", "Bankruptcy", "Board", "By-Laws", "Certificate of Formation", "Covered Persons", "Directors", "Exchange", "Exchange Act", "Member Organization", "Member Representative Director", "Officer", "Person", "Regulatory Fund" and "Stockholder" for ease of reference. The Exchange also proposes a section on rules of construction which further explain the definitions. The definitions are only applicable to the LLC Agreement. Previous Schedule A is now Schedule B and is amended to eliminate the reference to the PHLX Member Voting Trust as discussed herein.

By-Laws

The Exchange is proposing to amend the By-Laws of the Exchange to substantially mirror those of NASDAQ Stock Market LLC.

In Article I, the Exchange proposes to reflect the proposed board structure and add clarifying definitions. Specifically, the Exchange is adding the following new definitions: "Act", "Associated Person or Person Associated with a Member Organization", "Board or Board of Directors", "Director", "Election Date", "Executive Representative", "FINRA", "Industry Director", "Member Representative Director", "Non-Industry Director", "Public Director", "Statutory Disqualification" and "Stockholder Director". The specific board designations will be discussed below.

The Exchange is proposing to delete certain definitions that reference the current board structure, which the Exchange is proposing to change, and other obsolete terms. Specifically, the Exchange is proposing to delete the following definitions: "Approved Lessor", "Designated Governor", "Designated Independent Governors", "Foreign Currency Options Participation", "Foreign Currency Options Participant or Participant", "Foreign Currency Options Participant Organization", "Governor", "Independent", "Independent Governor", "Lessee", "Lessor", "Material Relationship", "Member Governor", "Member Organization Representative", "Owner", "Trust Agreement", "Series A Preferred Stock", "Stockholder Governor", "Preferred Stock", and "Trust". The Exchange is proposing to delete the Governor and Trust designations related to the Board in connection with the proposed board structure. The Exchange is also proposing to eliminate foreign currency option participations.

Foreign Currency Option Participations

In 1982, the Exchange filed a proposal concerning access to the Exchange's foreign currency options market.[33] The Exchange at that time indicated that such access to the Exchange's foreign currency options market would be available to those who have purchased a foreign currency options participation

[22] *See* Section 10 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[23] *See* Section 13 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[24] *See* Section 15 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[25] *See* Section 16 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[26] *See* Section 17 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[27] *See* Section 18 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[28] *See* Section 19 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[29] *See* Section 21 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[30] Sections 22–28 of the LLC Agreement are renumbered in the proposal. All references are to the current section numbers.

[31] *See* Section 27 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[32] *See* Section 28 of the Second Amended Limited Liability Co. Agreement of the NASDAQ Stock Market LLC.

[33] *See* Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982) (SR–Phlx–82–5).

("FCO Participation"). Non-members were admitted to the Exchange as foreign currency option participants ("FCO Participants") by the Admission Committee by completing an application process similar to that utilized when Exchange membership was sought.[34] The initial offering period began on January 25, 1982 and extended through the last business day preceding the first day of foreign currency options trading on the Exchange.[35]

Currently, the holder of an FCO Participation is entitled to enter into foreign currency options transactions on the Exchange. FCO Participants and the organizations upon which they confer foreign currency options trading privileges are subject to all the provisions of the Exchange Rules that are applicable to Members and Member Organizations and to many provisions of Exchange's By-Laws.

In 2003, the Exchange filed to demutualize the Exchange. At the time of demutualization, the Exchange proposed that access to the Exchange facilities and the right to trade will be conferred by newly-issued permits rather than by ownership or leasing of seats of the Exchange.[36] Trading of foreign currency options continued to be allowed through the FCO Participations, but, after demutualization, such trading of FCOs were permitted through permits.[37]

The Exchange currently does not have any persons who are FCO Participants.[38] The Exchange does not believe such participations are necessary in light of the ability to gain access to the Exchange with a permit. The Exchange is proposing to eliminate FCO Participations at this time. Specifically, the Exchange proposes to delete all references to FCO Participations, participants, participant organizations, seat leases, owners and lessors.

In Article II, the Exchange proposes to delete By-Law Sections 2–1 titled Registered Office and Registered Agent and By-Law Section 2–2 titled Other Offices. The Exchange states its registered office in the Certificate of Formation and LLC Agreement at By-Law Section 3. The Exchange proposes to rename Article II "Annual Election of Member Representative Directors and Other Actions By Members." The Exchange proposes to mirror the provisions of the NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement at Article II. The Exchange is proposing to add the following provisions to Article II: By-Law Section 2–1 titled Record and Election Date; By-Law Section 2–2 titled Voting, By-Law Section 2–3 titled Filling of Vacancies; and By-Law Section 2–4 titled Member Meetings.

Proposed By-Law Section 2–1 concerning the Record and Election Date would replace the following current By-Law Sections, which are proposed to be deleted: By-Law Sections 3–2 and 3–15. The language contained in proposed By-Law Section 2–1 is substantially similar to the language in current By-Law Section 3–2. Proposed Section 2–2 concerning voting contains similar language to current By-Law Sections 3–7 and 3–12. Proposed By-Law Section 2–3 concerning vacancies, which allows for an Exchange Member to fill the vacancy, would replace current By-Law Section 4–7, which provides for a majority vote by the Board of Governors. Proposed By-Law Section 2–4 titled Member Meetings states that the Exchange shall not be required to hold member meetings. Proposed By-Law Section 2–4 would replace current By-Law Sections 3–1 and 3–11, which sections presuppose member meetings.[39]

In Article III, the Exchange is proposing to delete various By-Laws and replace them with the By-Laws similar to those of NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement at Article III. The title to Article III captioned Member and Member Organization Nominations-Member and Member Organization Annual Elections—Member and Member Organizations Meetings is being deleted. The Exchange is deleting By-Law Section 3–1 titled Place of Member and Member Organization Meetings, which By-Law is replaced by By-Law Section 2–4. The Exchange is deleting By-Law Section 3–2 titled Annual Selection of Designated Governors which is replaced by proposed By-Law Section 2–1. The Exchange is deleting Section 3–3 titled Removal of Designated Governors. This language would be replaced by proposed By-Law Section 3–2. The Exchange is deleting current By-Law Sections 3–4 through 3–6, which are reserved. The Exchange is replacing current By-Law Section 3–7 titled Election of Nominees for Designate [sic] Governors In the Event of a Contested Vote, with proposed new By-Law Section 2–2. The Exchange is deleting current By-Law Section 3–8 titled Death, Withdrawal or Disqualification of Designated Nominees. A portion of this By-Law is contained in proposed By-Law Section 2–1(c). The Exchange is deleting By-Law Sections 3–9 and 3–10, which are reserved. The Exchange is deleting current By-Law Section 3–11 titled Notice of Member and Member Organization Meetings, as per proposed By-Law Section 2–4. The Exchange is deleting current By-Law 3–12 titled Vote of Member Organizations, which is replaced by proposed By-Law Section 2–1. The Exchange is deleting current By-Law Sections 3–13 titled Quorum of Members and Member Organizations—Proxies and By-Law Section 3–14 titled Lists of Members and Member Organizations Entitled to Vote, as per proposed By-Law Section 2–4. The process for voting is contained in proposed By-Law Section 2–1. The Exchange is proposing to delete By-Law Section 3–15 titled Determination of Record Dates, which is replaced by proposed By-Law Section 2–1. The Exchange is deleting current By-Law Section 3–16 titled Governance of Member and Member Organization Meetings as per proposed By-Law Section 2–4.

The Exchange is proposing to add similar By-Law Sections to newly named Article III captioned "Board of Directors," which mirror those of NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement at Article III. The Exchange is proposing to add a new By-Law Section 3–1 titled "Selection; Term," which replaces current By-Law Section 4–4 as described above and adds language to clarify that the Directors shall serve for a one year term.[40] The Exchange proposes a new By-Law Section 3–2 titled "Qualifications" to replace current By-Law Sections 4–1

[34] *See* Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982) (SR–Phlx–82–5).

[35] *See* Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982) (SR–Phlx–82–5).

[36] *See* Securities Exchange Act Release No. 48847 (November 26, 2003), 68 FR 67720 (December 3, 2003) (SR–Phlx–2003–73).

[37] *See* Exchange Rule 908. The Series A–1 permit allows members to trade FCOs.

[38] Today Members trade foreign currency utilizing a Series A–1 permit.

[39] With respect to the election of the Member Representative Director, the process remains substantially unchanged. In the uncontested election, newly proposed By-Law Section 2–1(d) provides the Stockholder elects from the List of Candidates, specifically the Member Representative Directors shall be elected by the Stockholder from the List of Candidate; uncontested would be where there is only one candidate for each Member Representative Director position. In a contested election newly proposed By-Law Section 2–2 provides that the Stockholder shall elect the persons on the List of Candidates who receive the most votes, where the Members have the right to cast one vote for each Member Representative Director position to be filled.

[40] *See* proposed By-Law Article III, Section 3–1(b).

and 4–4(c).[41] The Exchange also proposes a new By-Law Section 3–3 titled "Regulation," a proposed new By-Law Section 3–4 "Conflicts of Interest, Contracts and Transactions Involving Directors" and proposed new By-Law Section 3–5 "Compensation of Board, Council, and Committee Members."

Board of Directors

The Exchange is proposing to amend the qualifications for its Board, which it proposes to rename "Board of Directors."[42] Currently, the Board of Governors is composed of the number of Governors determined from time to time by the Board of Governors and includes: one (1) Governor, who is the Chief Executive Officer; one (1) Governor who is a Member Governor who meets the qualifications set forth in By-Law Article I with respect to the Member Governor; one (1) Governor who is a Stockholder Governor who meets the qualifications set forth in By-Law Article I with respect to the Stockholder Governor; and such additional Governors who are Independent Governors and meet the qualifications set forth in By-Law Article I, fill the remaining seats on the Board of Governors, including a number of Designated Independent Governors, which, together with the Member Governor equal at least 20 percent of the total number of Governors.

The Exchange is proposing to replace this aforementioned Board composition with the following: A Board comprised of a number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), which would equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement. The Stockholder may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Stockholder at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors would shorten the term of any incumbent Member Representative Director. At least twenty percent (20%) of the Directors would be Member Representative Directors. Each Director elected, designated or appointed by the Stockholder would hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. A Director need not be a member of the Exchange.[43]

The Exchange proposes the following definitions below for the various Director positions in Article I of the By-Laws. The term "Industry Director" shall mean a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

The term "Member Representative Director" shall mean a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Member pursuant to these By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of a Member. The term "Non-Industry Director" shall mean a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange; or (iii) any other individual who would not be an Industry Director. The term "Public Director" shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. The term "Stockholder Director" shall mean a Director who is an officer, director (or a person in a similar position in business entities that are not corporations), designee or an employee of a holder of Common Stock or any affiliate or subsidiary of such holder of Common Stock and is duly elected to fill the one (1) vacancy on the Board of Directors allocated to the Stockholder Director.

The Exchange is proposing to replace the Independent Director with a Public Director. The Exchange is proposing to replace the Designated Industry Governor/Member Governor designation with a Member Representative Director. The Exchange is proposing to replace the Stockholder Governor with a Stockholder Director. The Exchange is also proposing to add an Industry Director. The Exchange is retaining the same 20 percent requirement with respect to Member representation. The composition of this Board would be identical to that of the NASDAQ Stock Market LLC.

The Exchange is proposing to add a By-Law Section 3–3 titled "Regulation." This By-Law Section mirrors that of the NASDAQ Stock Market LLC.[44] Currently, By-Law Section 4–24 concerns Interested Transactions. This proposed new By-Law would replace current By-Law Section 4–24. The Exchange is proposing to add a By-Law Section 3–5 titled "Compensation of Board, Council, and Committee Members." This By-Law would replace current By-Law Section 4–5, which concerns the Compensation of

[41] By-Law Article III, Section 3–2(b) contains newly proposed language that would allow for removal of a director with cause (the Director no longer satisfies the classification for which the Director was elected or the Director's continued service as such would violate the compositional requirements of the Board set forth in Article III, Section 3–2(a)).

[42] The Board is currently named the Board of Governors.

[43] *See* Exchange's LLC Agreement Section 8(a).

[44] *See* NASDAQ Stock Market LLC By-Law Article III at Section 7.

Governors. By-Law Section 3–5 mirrors that of NASDAQ Stock Market LLC.[45]

The amendments discussed herein to Article III and the proposed Board structure and proposed By-Laws would replace By-Law Article IV. Specifically, By-Law Section 4–1, titled Number and Composition, would be deleted and replaced by newly proposed By-Law Section 3–2. By-Law Section 4–2, which is reserved, would be deleted. By-Law Section 4–3, titled Term, would be deleted and replaced by Section 8 of the LLC Agreement and By-Law Section 2–1. Section 4–4, titled Duties and Powers, would be deleted and replaced by the newly proposed By-Law Sections in Article III.

As mentioned above, By-Law Section 4–5 titled Compensation of Governors would be deleted and replaced by new By-Law Section 3–5. By-Law Section 4–6 titled Resignations would be deleted and replaced by new By-Law Section 3–1. By-Law Section 4–7 titled Vacancies would be deleted and replaced by new By-Law Section 3–1. By-Law Section 4–8 titled Disqualification of Governors would be deleted and replaced by new By-Law Section 3–1. By-Law Section 4–9 titled Quorum and By-Law Section 4–10 titled Place of Meeting are being deleted and replaced by Section 8 of the LLC Agreement. The following By-Law Sections are also being deleted and replaced by Section 8 of the LLC Agreement: By-Law Section 4–11 titled Regular and Annual Meetings; By-Law Section 4–12 titled Action at Meetings; By-Law Section 4–13 titled Adjourned Meetings; By-Law Section 4–14 titled Special Meetings; By-Law Section 4–15 titled Notices of Meetings of Board of Governors; By-Law Section 4–16 titled Informal Action by the Board of Governors; and By-Law Section 4–17 titled Interpretation of By-Laws.

The Exchange is simply renumbering By-Law Section 4–18 titled Indemnification, to By-Law Section 3–6 and changing references from Governor to Director and correcting By-Law references. By-Law Section 4–19 titled Term of Office would be deleted and replaced by Section 8 of the LLC Agreement.

The Exchange is simply renumbering By-Law Section 4–20 titled Exercise Rights with Respect to Stock Clearing Corporation Stock to By-Law Section 3–7 and amending the reference from Governor to Director. By-Law Section 4–21 titled Annual Financial Report would be deleted. By-Law Section 4–22 titled Attendance of Meetings by Electronic Means would be simply renumbered as By-Law Section 3–8 and references to Governor are being changed to Director. By-Law Section 4–23 titled Authority to Take Action Under Emergency or Extraordinary Market Conditions would be simply renumbered as By-Law Section 7–5. By-Law Section 4–24 titled Interested Transaction would be deleted and replaced by proposed new By-Law Section 3–4.

The Exchange is renaming Article IV, which is currently captioned Chair and Officers of the Exchange to "OFFICERS, AGENTS AND EMPLOYEES." The NASDAQ Stock Market LLC has a similar caption in its By-Laws.[46] The Exchange is proposing to mirror the NASDAQ Stock Market By-Laws Sections 1 though 11. The Exchange has adopted proposed new By-Law Sections 4–1 titled "Delegation of Duties of Officers" and By-Law Section 4–2 titled "Resignation and Removal of Officers" text from the NASDAQ Stock Market LLC By-Laws and amended the remaining By-Laws in proposed Article III to mirror those of NASDAQ Stock Market LLC. The Exchange proposes to rename the remainder of Article IV as follows: By-Law Sections 4–3 titled Chair of the Board of Directors; By-Law Section 4–4 titled Chief Executive Officer; By-Law Section 4–5 titled President; By-Law Section 4–6 titled Vice President; By-Law Section 4–7 titled Chief Regulatory Officer; By-Law Section 4–8 titled Secretary; By-Law Section 4–9 titled Assistant Secretary; By-Law Section 4–10 titled Treasurer; and By-Law Section 4–11 titled Assistant Treasurer. These sections all mirror those of NASDAQ Stock Market LLC.[47]

The Remaining Sections of current Article V are being deleted. Specifically, By-Law Section 5–1 titled Board's Appointive Power would be replaced by proposed new By-Law Section 4–1. By-Law Section 5–3, which is reserved, would be deleted. By-Law Section 5–7 titled Other Officers would be replaced by proposed new By-Law Section 4–1. By-Law Section 5–8 titled Powers and Duties of the Secretary would be replaced by proposed new By-Law Section 4–8. By-Law Section 5–9 titled Powers and Duties of the Treasurer would be replaced by proposed new By-Law Section 4–10. By-Law Sections 5–10 titled Powers and Duties of Vice Presidents and Assistant Officers, By-Law Section 5–11 titled Delegation of Office and By-Law Section 5–12, titled Resignations, are being deleted.

The Exchange is deleting current By-Law Articles VI and VII, which are reserved. By-Law Article VIII, currently captioned Presiding Officials of the Exchange, will be renumbered as By-Law Article V and will be captioned as "STANDING COMMITTEES." The Exchange is proposing to delete By-Law Section 8–1 titled Presiding Exchange Officials, and relocate this By-Law into Rule 1000(e). This will be discussed in further detail below. By-Law Article IX, which is currently reserved, is proposed to be deleted.

The Exchange is proposing to mirror the NASDAQ Stock Market LLC in adopting By-Law Sections 5–1, 5–2 and 5–3.[48] The Exchange is proposing to adopt similar committees which exist today under the NASDAQ Stock Market LLC By-Laws. Proposed new By-Law Section 5–1, titled "Committees," would require committee members, who are not Directors, to provide the Secretary of the Exchange certain information to classify a committee member. This Section will also govern the term of office.

Proposed new By-Law Section 5–2, would be titled "Committees Composed Solely of Directors." These committees would include an Executive Committee, Finance Committee and a Regulatory Oversight Committee. The Exchange currently has these committees.

Proposed new By-Law Section 5–3 would be titled "Committees Not Composed Solely of Directors." The Nominating Committee and the Member Nominating Committee would remain the same as currently exists today. The Business Conduct Committee would also remain unchanged.

The Exchange proposes to amend the composition of the Business Conduct Committee. Currently, the Business Conduct Committee is required to be comprised of not less than five (5) nor more than nine (9) members, as established by the Board of Governors. The majority of committee members are required to be Non-Industry members; and the remaining committee members are Industry members. The Exchange proposes to amend the composition as follows: The Business Conduct Committee shall consist of not less than eight (8) nor more than twelve (12) members, as established by the Board of Directors. The Business Conduct Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Business

[45] *See* NASDAQ Stock Market LLC By-Law Article III at Section 8.

[46] *See* NASDAQ Stock Market LLC By-Laws Article IV.

[47] *See* NASDAQ Stock Market LLC By-Laws Article IV.

[48] *See* NASDAQ Stock Market LLC By-Law Article III, Sections 4–6.

Conduct Committee. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. This proposed composition mirrors that of the NASDAQ Stock Market's NASDAQ Review Council composition.[49]

The Quality of Markets Committee would continue to exist with different functions. Similar to the NASDAQ Stock Market LLC By-Laws, the Exchange proposes that the Quality of Markets Committee would have the following functions: (A) To provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the national securities exchange operated by the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets. The Quality of Markets Committee would include broad representation of participants in the national securities exchange operated by the Exchange, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee would be comprised of a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee would equal or exceed the sum of the number of Industry members and Member Representative members.

Finally, the Exchange proposes to rename its Options Trade Review Committee as the Market Operations Review Committee. The functions of this committee are specified in Rules 124, 1092, 3312 and Option Floor Procedure Advice F–27. The Market Operation Review Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Market Operations Review Committee. No more than 50 percent of the members of the Market Operations Review Committee would be engaged in market making activity or employed by a Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

The Exchange is replacing current By-Law Sections 10–1 titled Standing Committees, By-Law Section 10–2 titled General Duties and Powers of Committees, By-Law Section 10–3 titled Proceedings of Special and Standing Committees, By-Law Section 10–4 titled Vacancies in Standing Committees—Ad Interim Appointments, By-Law Section 10–5 titled Continuation of Committees, By-Law Section 10–9 titled Regulatory Oversight Committee, By-Law Section 10–10 titled Options Trade Review Committee, By-Law Section 10–11 titled Business Conduct Committee, By-Law Section 10–14 titled Executive Committee, By-Law Section 10–15 titled Finance Committee, By-Law Section 10–19 titled Nominating Committees and By-Law Section 10–21 titled Quality of Markets Committee with these proposed new By-Law Sections: By-Law Section 5–1 titled Committees, By-Law Section 5–2 titled Committees Composed Solely of Directors and By-Law Section 5–3 titled Committees Not Composed Solely of Directors. The following By-Law Sections, which are currently reserved, are being deleted: By-Law Sections 10–6, 10–7, 10–8, 10–12, 10–13, 10–16, 10–17, 10–18 and 10–20.

The Exchange is proposing to delete the title of By-Law Article XI concerning Appeals. The Exchange is also deleting By-Law Sections 11–1 titled When Allowed, 11–2 titled Advisory Committees on Appeals and 11–3 Appeal from Decisions of Hearing Panel or Business Conduct Committee. Exchange Rules 124, 507[50], 511[51], 900.2[52], 960.9[53], 1092 and 3312 currently contain review procedures where applicable. Additional language was added to Rules 511, 900.2 and 960.9 concerning review procedures.

The Exchange is proposing to delete the title of By-Law Section XII captioned "Permits-Eligibility-Election-Initiation Fee." By-Law Section 12–1 titled Rights to Issue Permits and Non-Transferability would be deleted and renumbered new By-Law Section 7–4. By-Law Section 12–2 titled Eligibility and By-Law Section 12–3 titled Number Held is deleted and proposed to be moved into Rule 908. By-Law Section 12–4 titled Admission of Corporation would be deleted, renumbered and proposed as new Rule 798. By-Law Section 12–5, which is reserved, would be deleted. By Law Section 12–6 titled Rights and Privileges would be deleted and renumbered as proposed new By-Law Section 6–1. By-Law Section 12–7 titled Rights and Privileges of Corporate Member would be and renumbered as part of proposed new By-Law Section 6–1(c). By-Law Section 12–8 titled Maintenance of Qualifying Permit Holder and Member Organization Representative would be deleted and added to Rule 921. By-Law Section 12–9 titled Acceptance of LLC Agreement, By-Laws and Rules, would be deleted and renumbered as proposed new By-Law Section 6–2. By-Law Section 12–10 titled Inactive Nominees would be deleted, renumbered and proposed as new Rule 925. By-Law Section 12–11 titled Use of Facilities of Exchange, would be deleted and renumbered as new By-Law Section 6–3. By-Law Section 12–12 titled, Certain Transitional Rules would be deleted and renumbered as new By-Law Section 6–4.

The title to By-Law Article XIII captioned Member Organizations—Trading-Specialist and Floor Brokerage Operations would be deleted. By-Law Section 13–1, titled Qualification would be deleted and renumbered as proposed new Rule 910 along with the following By-Law Sections: 13–2 titled Qualifications, 13–3 titled Exclusion of Banks and Investment Trusts, 13–6 titled Conditions to Member Organization Status, 13–7 titled Violation of Terms of Registration, 13–8 titled Termination of Registration; and 13–9 titled Absence or Disability of an Officer, Member of the Exchange. By-Law Section 13–4 titled Provisions of By-Laws and Rules Applicable to Member and Participant Organizations was renumbered as proposed new By-Law Section 6–5 and retitled as Provisions of By-Laws and Rules Applicable to Member Organizations. By-Law Section 13–5 titled Liability of Officers, Directors and Substantial Stockholders[54] was renumbered as proposed new By-Law Section 6–6. By-Law Section 13–10 titled Application to Member Organizations would be renumbered as proposed new By-Law Section 6–7. In relocating these Rules, all references to foreign currency options participants or participations

[49] *See* NASDAQ Stock Market LLC By-Law Article VI, Section 2.

[50] Additional language was added to Rule 507 which is proposed to be deleted from By-Law Article XI, Section 11–1.

[51] Additional language was added to Rule 511 which is proposed to be deleted from By-Law Article XI, Section 11–1.

[52] Additional language was added to Rule 900.2 which is proposed to be deleted from By-Law Article XI, Section 11–1.

[53] Additional language was added to Rule 960.9 which is proposed to be deleted from By-Law Article XI, Section 11–2.

[54] For purposes of By-Law Section 6–6, a substantial stockholder is a stockholder with a controlling interest in the entity.

were removed from the text of new rules.

The title to By-Law Article XIV captioned Dues, Fines, Net Commissions and Other Charges—Penalties for Non-Payment would be deleted. By-Law Section 14–1 titled Fees, Dues and Other Charges would be deleted. This By-Law Section language is currently contained in Rule 55. By-Law Article 14–5 titled Penalty for Non-Payment is being deleted and renumbered as Rule 55. By-Law Article 14–2, which is reserved, would be deleted. By-Law Section 14–3 titled Corporate Member Exempt would be deleted and renumbered as Rule 798. By-Law Section 14–4 titled May Be Waived for Members in Military Service would be deleted and renumbered as proposed new Rule 53 along with By-Law Section 14–6 titled Liability for Dues Until Transfer. By-Law Section 14–7 titled Dues on Transfer of Participation is being deleted and renumbered as proposed new Rule 53. By-Law Sections 14–8 and 14–9, which are reserved, would be deleted. By-Law Section 14–10 titled Service Fee would be deleted and renumbered as proposed new Rule 54. By-Law Section 14–11 titled Claims by Former or Deceased Members would be deleted and renumbered as proposed new Rule 55. By-Law Section 14–12 titled Effect of Suspension or Termination on Payment of Fees would be deleted and renumbered as proposed new Rule 56. In relocating these Rules, all references to foreign currency options participants or participations were removed from the text of new rules.

The title to By-Law Article XV captioned Transfer of Foreign Currency Options Participations would be deleted along with Sections 15–1 through 15–11 because the Exchange is proposing to eliminate foreign currency option participations.

The title of By-Law Article XVI captioned Members' Contracts and Exchange Contracts would be deleted. By-Law Section 16–1 titled Members' Contracts would be deleted and renumbered as proposed new Rule 57. By-Law Article 16–2 titled Exchange Contracts would be deleted and renumbered proposed new Rule 58. By-Law Article 16–3 titled By-Laws and Rules Incorporated into Exchange Contracts would be renumbered as proposed new By-Law Section 6–8. By-Law Section 16–4 titled Deliveries through Registered Clearing Agencies would be deleted and renumbered as proposed new Rule 59.

The title to By-Law Article XVII captioned Insolvency—Suspension—Reinstatement would be deleted. By-Law Section 17–1 titled Suspension for Insolvency on Declaration would be deleted and renumbered as proposed new Rule 70. By-Law Section 17–2 titled Suspension for Insolvency on Advice to Committee on Business Conduct would be deleted and renumbered as proposed new Rule 71. By-Law Section 17–3 titled Investigation of Insolvency would be deleted and renumbered as proposed new Rule 72. By-Law Article 17–4 titled Time for Settlement of Insolvent Member or Participant would be deleted and renumbered as proposed new Rule 73. By-Law Section 17–5 titled Reinstatement of Insolvent Member or Participant would be deleted and renumbered as proposed new Rule 74. By-Law Section 17–6 titled Disciplinary Measures During Suspension for Insolvency would be deleted and renumbered as proposed new Rule 75. By-Law Section 17–7 titled Rights of Member Suspended for Insolvency would be deleted and renumbered as proposed new Rule 76. In relocating these Rules, all references to foreign currency options participants or participations were removed from the text of new rules.

The title to Article XVIII captioned Offenses, Discipline, Penalties and Business Connections would be deleted. The language in By-Law Section 18–1 titled Offenses, Discipline, Penalties is being deleted as the language is currently contained in Rule 960.1. By-Law Section 18–2 titled Announcement of Penalties is being deleted and the text is being relocated into current Rule 960.8. By-Law Section 18–3 titled Responsibility of Member or Participant for Acts of His Organization would be deleted and relocated as proposed new Rule 910. By-Law Section 18–4 titled Disapproval of Business is being deleted and relocated as proposed new Rule 63. By-Law Section 18–5 titled Effect of Suspension or Termination would be deleted and renumbered as proposed new Rule 63. In relocating these Rules, all references to foreign currency options participants or participations were removed from the text of new rules.

The title to By-Law Article XIX, which is reserved, would be deleted. The title to By-Law Article XX captioned Vacancies Created By Expulsion, Suspension, or Termination would be deleted. By-Law Section 20–1 titled Office Vacated by Suspension or Termination would be deleted and renumbered as proposed new Rule 64. By-Law Sections 20–2, which is reserved, and By-Law Section 20–3 titled Change in Status of Partner of Officer, would be deleted as they are being replaced by proposed new Board definitions as discussed herein.

The title to By-Law Article XXI, which is reserved, would be deleted. The title to By-Law Article XXII captioned Amending the By-Laws, would be deleted. By-Law Section 22–1 titled Amendments to By-Laws would be renumbered as By-Law Section 6–9. The title to By-Law Article XXIII, which is reserved, would be deleted. The title to By-Law Article XXIV captioned Seal of the Exchange would be deleted. By-Law Section 24–1 titled Seal would be renumbered as By-Law Section 6–10.

The title to By-Law Article XXV captioned Fiscal Year of the Exchange would be deleted. By-Law Section 25–1 titled Fiscal Year would be renumbered as By-Law Section 6–11. The title to By-Law Article XXVI captioned Exchange Options Trading would be deleted. By-Law Sections 26–1 and 26–2, which are reserved, are being deleted. By-Law Section 26–3 titled Dealings would be renumbered as By-Law Section 6–12.

The title to By-Law Article XXVII captioned Foreign Currency Options Trading would be deleted. By-Law Sections 27–1 through 27–4 would be deleted as well because the Exchange is eliminating foreign currency option participations.

The title to By-Law Article XXVIII captioned Stockholder Nominations—Stockholder Annual Elections—Stockholder Meetings would be deleted. By-Law Sections 28–1 through 28–12 are being deleted because they are superseded by the proposed amendments to the LLC Agreement and By-Law Article II. By-Law Article 28–13 titled Action Without Meeting would be renumbered as proposed new By-Law Section 6–13.

The title to By-Law Article XXIX captioned Shares would be deleted. By-Law Sections 29–1 titled Certificates, 29–2 titled Signatures, 29–3 titled Share Ledger, 29–4 titled Transfers of Shares, 29–5 titled Cancellation, 29–6 titled Lost, Stolen, Destroyed and Mutilated Certificates are superseded by amendments to the LLC Agreement and therefore deleted. By-Law Section 29–7 titled Fixing of Record Date would be renumbered as proposed new By-Law 6–14. By-Law Section 29–8 titled Distributions would be renumbered as proposed new By-Law Section 6–15. Proposed new By-Law Section 6–16 titled "Waiver of Notice" and By-Law Section 6–17 titled "Execution of Instruments Contracts, etc." are being added and mirror language contained in

the NASDAQ Stock Market LLC By-Laws.[55]

The title to proposed new By-Law Article VII captioned "Exchange Authorities" would be added. Proposed new By-Law Section 7–1 titled "Rules", By-Law Section 7–2 titled "Disciplinary Proceedings", By-Law Section 7–3 titled "Membership Qualifications", By-Law Section 7–4 titled "Fees, Dues, Assessments, and Other Charges", and By-Law Section 7–5 titled "Authority to Take Action Under Emergency or Extraordinary Market Conditions" are being added and substantially mirror language in the NASDAQ Stock Market By-Laws.[56] By-Law Section12–1 titled Right to Issue Permits and Non-Transferability was deleted and renumbered and is currently Section 7–6.

Rules

The Exchange is proposing to delete definitions from Rule 1. The Exchange is proposing to delete definitions that relate to foreign currency options participations because the Exchange is proposing to eliminate such participations. The following definitions are related to foreign currency option participations and are proposed for deletion: "Foreign Currency Options Participant or Participant", "Foreign Currency Option Participant Organization", "Approved Lessor", "Lessee and Lessor".

The Exchange is also proposing to delete definitions that related to the former XLE trading system. The following definitions relate to XLE and are obsolete and proposed for deletion: "Approved Dealer", "Market Maker", "Market Maker Authorized Trader", "Participant Authorized User or PAU", "Routing Agreement", "XLE", "XLE Participant", "Quote Management Instruction or QMI", "Public Agency Order", "Professional Order", "Proprietary Order", "Mixed Lot", "Round Lot" and "Odd Lot". The term "Member Organization Representative" is also being deleted and replaced by the proposed term "Executive Representative".

The Exchange is also proposing to add several clarifying definitions such as "Act, Exchange Act or Securities Exchange Act", "Associated Person or Person Associated with a Member Organization", "Board or Board of Directors", "By-Laws", "Commission", "Director", "FINRA", "Investment Banking or Securities Business", "SEC", "Representative" and "Securities Act". The Exchange believes these definitions, which are located throughout the Rules, will clarify the meaning of each of these terms. The Exchange also proposed to alphabetize the definitions.

The Exchange is proposing several universal amendments to both the By-Laws and Rules of the Exchange. The Exchange is proposing to change references from "Board of Governors" to "Board of Directors". The Exchange is proposing to change references to "National Association of Securities Dealers" or "NASD" to "Financial Industry Regulatory Authority, Inc." or "FINRA". The Exchange is proposing to replace certain references to "XLE" with "PSX", where applicable and delete all obsolete references. The Exchange is proposing to replace "Member Organization Representative" with "Executive Representative". The Exchange is proposing to delete all references to Foreign Currency Options Participation, Participation, Lessor and Lessee. The Exchange is proposing to replace certain usages of "Phlx" with "Exchange". The Exchange proposes to remove certain references to AUTOM and AUTO–X, which terms were replaced by Phlx XL.[57]

The Exchange is proposing to replace "NASDAQ OMX PHLX, Inc." with "NASDAQ OMX PHLX LLC".[58] References to the "Certificate of Incorporation" are proposed to be replaced with "Limited Liability Company Agreement" and/or "Certificate of Formation" where appropriate.[59]

The Exchange is proposing to add Rules as indicated above that were originally contained in the By-Laws. The Exchange is proposing to make capitalizations of certain terms consistent such as the words "Rules" and "By-Laws". Also, the Exchange proposes to reference Member and Member Organization with capitalizations in the By-Laws and lower case letters in the Rules. The Exchange proposes to delete certain Equity Floor Procedure Advices which are no longer relevant because the Exchange does not have an equity trading floor or because XLE is no longer utilized.

The Exchange proposes to update names of certain self-regulatory organizations to reflect corporate actions. The Exchange proposes to change references to the Examinations Department to reflect the Exchange or the Membership Department as applicable. The Exchange has restructured certain departments and would like to clarify which departments should receive such information and in some cases reflect the Exchange instead of a specific department because the Exchange otherwise uses forms or indicates via its Web site which specific person should receive certain information. The Exchange also proposes to change references from "Market Surveillance" to "Regulatory staff." This change also reflects the restructuring of certain departments.

The Exchange is proposing to clarify certain Standing Committee references. References to the "Options Trade Review Committee" are proposed to be changed to "Market Oversight Review Committee". This Market Oversight Review Committee would be utilized for both equity and options matters.[60] The Exchange is proposing to delete Rules 930–949 which concern Foreign Currency Option Participations, which the Exchange is proposing to delete.

The Exchange is reserving the following rules which related to XLE and are no longer necessary as they do not relate to PSX: Rule 111, Bids and Offers Binding, Rule 125, Order Entry and Execution Increments, Rule 161, Transmission of Bids or Offers, Rule 162, Orders Deemed Regular Way, Rule 163, Clearly Erroneous Executions, Rule 164, Trading Halts, Rule 165, Clearance and Settlement, Rule 170, Registration of Market Makers, Rule 171, Obligations of Market Maker Authorized Traders, Rule 172, Registration of Market Makers in a Security, Rule 173, Obligations of Market Makers, Rule 174, Hearing and Review of Decisions by the Exchange Staff, Rule 180, Access, Rule 181, Order Entry, Rule 182, Order Marking, Rule 183, Trading Sessions Customer Disclosure, Rule 184, Order Ranking and Display, Rule 185, Orders and Order Execution, Rule 186, Locking or Crossing Quotations in NMS Stocks, Rule 187, Odd and Mixed Lots and Rule 189, Clearance and Settlement and Anonymity.

These Rules are related to XLE, the Exchange's former equity trading system, which ceased operations in October 2008.[61] The Exchange recently launched a new cash equities trading

[55] *See* NASDAQ Stock Market LLC By-Laws at Article VII, Sections 1 and 2.

[56] *See* NASDAQ Stock Market LLC By-Laws at Article IX, Sections 1 through 5.

[57] *See* Exchange Rule 1080(a).

[58] *See* Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx-2010–104).

[59] *See* Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx-2010–104).

[60] *See* Exchange Rule 1092 (Obvious Errors and Catastrophic Errors) and 3312 (Clearly Erroneous Transactions).

[61] *See* Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR–Phlx–2008–65).

platform.[62] The Exchange filed to establish rules relating to PSX. Specifically, Rule 3202 notes existing rules which are applicable to PSX. The aforementioned rules are not related to PSX or the Exchange's options business and are therefore obsolete.

With respect to Exchange Rule 3202, the Exchange relocated several By-Laws, which are applicable to PSX Participants to sections of the Rules. The Exchange is amending Rule 3202 to specifically enumerate those former by-laws as proposed rules applicable to PSX Participants. The new Rules, which were previously By-Laws, include Rules 52, 53, 54, 55, 56, 57, 58, 59, 62, 63, 64, 70, 71, 72, 73, 74, 75, 76, 798, 910 and 925. Additionally, the Exchange is proposing to add Rule 803, Criteria for Listing–Tier 1, to Rule 3202. The Exchange previously filed a rule change which discussed the applicability of Rule 803 to PSX Participants.[63] The Exchange proposes to note that rule is applicable to PSX Participants by adding Rule 803 to the list of Rules notes in 3202.

The Exchange is removing references to XLE in Rule 110, Bids and Offers—Precedence, Rule 120, Precedence of Offers at Same Price, and Rule 136 Trading Halts in Certain Exchange Traded Funds, because those references are no longer relevant. The Exchange is amending the title of Rule 124, "Disputes—Options" to indicate that Rule applies to options and not equities.

The Exchange is also amending other references in the Rule text to correct cross-references to sections that were impacted by previous rule changes.[64] The Exchange has amended certain cross-references for technical accuracy. The Exchange has made technical amendments to certain rules which are reserved or require a heading for ease of reference. The Exchange added various additional clarifying text throughout to make the Rules more clear and provide additional references where necessary. These technical amendments were not substantive.

[62] *See* Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

[63] *See* Securities Exchange Act Release Nos. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

[64] *See* Securities Exchange Act Release Nos. 42889 (June 2, 2000), 65 FR 36878 (June 12, 2000) (SR–Phlx–00–12) (a proposal to rescind Rule 132); 60169 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR–Phlx–2009–40) (a proposal to amend text in Rule 1043); and 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR–Phlx–2010–131) (a proposal to revise Rule 1014).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[65] in general, and furthers the objectives of Section 6(b)(5) of the Act[66] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by streamlining subsidiary self-regulatory organizations of NASDAQ OMX Group to conform the corporate documents and provide clarity to its members. The Exchange believes that amending the Limited Liability Company Agreement and the By-Laws to amend the board structure and committees and eliminate the Series A Preferred Shareholder continues to provide for the fair representation for its members.

The Exchange is proposing to populate the board with public and non-industry Directors and Member Representative Directors, which would continue to comprise twenty percent of Directors. The Exchange is not amending its current structure which allows for the nomination of Directors by the membership. The Exchange believes that the current board structure and election process provide for the fair representation of members in the selection of directors and the administration of the Exchange consistent with the requirements of Section 6(b)(3) of the Exchange Act. This proposal will allow members to have a voice in the use of the Exchange and ensure that the Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. Additionally, the Exchange believes that the composition of the Board satisfies the requirements of Section 6(b)(3) of the Exchange Act, which requires that one or more directors be representative of issuers and investors and not be associated with a member of the Exchange, or a broker dealer.

The Regulatory Oversight Committee will continue to be comprised of Public Directors and ensure the Exchange's ability to protect the public interest and foster the integrity of the Exchange by bringing a unique, unbiased prospective to the process. The Exchange is not amending the composition of its Executive, Finance, Nominating or Member Nominating Committees. The Exchange is amending the composition of its Business Conduct Committee so that the majority of its committee members shall be Non-Industry members and the remaining committee members shall be Industry members. The Exchange is also amending the Quality of Markets Committee and the Market Operations Review Committee (currently named Options Trade Review Committee) composition so that those committees are comprised of a number of Member Representative members that equal to at least twenty percent of the total number of members of the Quality of Markets Committee. These Committees continue to allow for fair representation of members.

The remaining conforming amendments to the Limited Liability Company Agreement and By-Laws to the NASDAQ Stock Market LLC model would streamline the NASDAQ's governance process and create equivalent governing standards among the NASDAQ self-regulatory organizations. The Exchange also renumbered various By-Law provisions into the Exchange By-Laws without substantive change.

The Exchange is also proposing certain amendments to eliminate the foreign currency option participations, delete obsolete terms, amend cross references, update terminology and conform the Rules to the proposes amendments to the Limited Liability Company Agreement and By-Laws. The Exchange believes that these amendments will provide more clarity and simplicity to the Exchange's Rules, Advices[67] and Regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i)

[65] 15 U.S.C. 78f(b).

[66] 15 U.S.C. 78f(b)(5).

[67] The Exchange's minor rule plan consists of options floor procedure advices ("OFPAs") And [sic] equity floor procedure advices ("EFPAs") (collectively "Advices") with preset fines, pursuant to Rule 19d–1(c) under the Act. *See* 17 CFR240.19d–1(c) [sic]. Most Advices have corresponding options rules.

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the 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–Phlx–2011–13 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4898 Filed 3–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63979; File No. SR–Phlx–2011–21]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Quality Opening Markets

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on February 16, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Rule 1017, Openings in Options, to reflect a system change under which the PHLX XL® automated options trading system [5] will initiate an opening "imbalance process" during the opening of trading in an option series when: (i) No other U.S. options exchange has opened the affected series for trading, and (ii) there is not a "quality opening market" (as defined below) present on the Exchange in such option series.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 improve the quality of executions that take place on the Exchange during the Opening Process when no other market center is open for trading in the affected series, by amending Exchange Rule 1017. Specifically, the Exchange's PHLX XL system will initiate an imbalance process when marketable opening orders on the Exchange could be executed against valid width quotes (defined in Exchange Rule 1014) [6] but there is not a "quality opening market"

[68] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May, 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

[6] A "valid width quote" for options on equities and index options means bidding and/or offering so as to create differences of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options. *See* Exchange Rule 1014(c)(i)(A)(1)(a).

(as set forth in a table posted on the Exchange's Web site).

Quality Opening Market

A "quality opening market " is a bid and offer on the Exchange comprised of the highest bid of all valid width opening quotes on the Exchange and the lowest offer of all valid width opening quotes on the Exchange, with a specific bid/ask differential that is narrower than the bid/ask differential of a valid width quote.

A quality opening market is calculated by determining the bid/ask differential of the best available bid and the best available offer on the Exchange. If such bid/ask differential is equal to or less than a specific range as defined in a table published by the Exchange, the available top of book quotation is considered to be a "quality opening market".

For example, currently for options priced under $2.00, a valid width quote is defined as a quote with a bid/ask differential that is not greater than $0.25. Assume at the opening on the Exchange, the Exchange's market is $0.00 bid, $0.25 offer for 500 contracts in an option that is quoted and traded in increments of $0.01 (a "penny pilot option"). Despite having a "valid width" quote on the Exchange, a market or marketable limit order to buy with equal or smaller size than the valid width quote size would be executed against the valid width quote offer of $0.25 if there were no other options markets open for trading in the affected series.[7] An execution of $0.25 in a penny pilot option that is normally quoted with, for example, a $0.03 or $0.04 bid/ask differential, may be considered unacceptable. The Exchange has experienced situations where, following such an execution, additional PHLX market participants submit quotes in the affected series at a significantly better level than the opening price. This result is unacceptable to both the Exchange and its customers. The Exchange believes that the "quality opening market" requirement should reduce, the number of occurrences of, or preclude, this result, especially in the case of out-of-the-money options series and relatively illiquid options.

Another example of the result the proposed rule change addresses concerns options having up to thirty-nine months from the time they are listed until expiration.[8] Strike price interval, bid/ask differential and continuity rules do not apply to such options series until the time to expiration is less than nine months.[9] Options series with expirations of nine months or more may be quoted with any bid/ask differential. Assume at the opening on the Exchange, the Exchange's market in such an option series is $0.00 bid, $5.00 offer for 50 contracts. A market or marketable limit order to buy with a size of 50 or fewer contracts would execute at $5.00, absent an imbalance process seeking a "quality opening market" on the Exchange.

In order to ensure quality opening executions in this circumstance, proposed Rule 1017(l)(v)(B) would state that, if there is no imbalance, and (1) no other U.S. options exchange has opened the affected series for trading, and (2) there is no "quality opening market" (as defined in a table to be determined by the Exchange and published on the Exchange's Web site), present on the Exchange in such option series, the PHLX XL system will begin the imbalance process [10] in order to seek additional valid width quotes that result in a "quality opening market" on the Exchange. During the imbalance process, the Exchange broadcasts "Imbalance Notices" seeking fresh quotations from participants at up to 3-second intervals.[11]

In this situation, the PHLX XL system will execute contra-side interest when either: (i) A "quality opening market " is present on the Exchange, (ii) another options exchange opens for trading in the affected series, or (iii) the imbalance process is complete. Once a "quality opening market" is present on the Exchange, or another options exchange opens for trading in the affected series, the imbalance process will be terminated and the contra-side marketable order interest will be executed in accordance with Exchange Rule 1017.

If no "quality opening market" is present during the imbalance process, and no other options exchange has opened for trading in the affected series during the imbalance process, contra-side marketable order interest will be executed against valid width quotes present on the Exchange in accordance with Exchange Rule 1017 upon the termination of the imbalance process.[12] The Exchange believes that, if no "quality opening market" is present during the imbalance process (and no other options exchange has opened for trading in the affected series), the valid width quote is the best opening price and therefore it is appropriate to execute at the valid width quote price.

The Exchange also proposes technical re-numbering changes to Rule 1017 to address proposed new Rule 1017(l)(v).

The Exchange believes that this proposal to "force" an imbalance process when there are no other markets open for trading in the affected series, and there is no "quality opening market" present on the Exchange, will enhance the opening price discovery process and encourage participants to submit high quality quotes at the opening of trading. This in turn should enhance the quality of executions at the opening of trading on the Exchange, all to the benefit of the investing public. The Exchange further believes that the proposal will promote increased customer confidence in the PHLX opening process, and should attract more opening order flow to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, the Exchange believes that the proposal benefits customers by improving prices and market efficiency at the opening of trading.

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.

[7] If there are other options markets open for trading in the affected series, the Exchange would route the order to better-priced away markets following a one-second "Route Timer." *See, e.g.,* Exchange Rule 1017(l)(iv)(B).

[8] Such options are referred to as Long Term Equity AnticiPation Securities ("LEAPS").

[9] *See* Exchange Rule 1012, Commentary .03.

[10] Although there is not a true "imbalance" in this situation, the Exchange believes that the imbalance process is the most efficient way to communicate to participants that it is seeking fresh quotations that would result in a quality opening market on the Exchange.

[11] *See* current Exchange Rule 1017(l)(v).

[12] The PHLX XL system may repeat the imbalance process up to three times (as established by the Exchange). *See* current Exchange Rule 1017(l)(v)(C)(6).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) [15] of the Act and Rule 19b–4(f)(6) [16] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, 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.

Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

The Exchange notes that the instant proposal to establish a "quality opening market" and to publish a table of acceptable opening bid/ask differentials on its Web site is substantially similar to its previously approved proposed rule change to establish an Opening Quote Range and an Acceptable Quote Range, and to publish those ranges in a table on its Web site.[17] The Opening Quote Range and the Acceptable Quote Range substantially track the quality opening market standard. Furthermore, because the table that describes the bid/ask differential required for a quality opening market is intended to be dynamic and subject to market conditions, the Exchange believes that it is appropriate to display the table on its Web site, just as it does with the Opening Quote Range and the Acceptable Quote Range.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

[16] 17 CFR 240.19b–4(f)(6).

[17] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–21 and should be submitted on or before March 25, 2011.

[18] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4897 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63978; File No. SR–Phlx–2011–25]

Self-Regulatory Organizations; NASDAQ OMX PHLX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt New Rule 3303 To Implement the Amendments to Regulation SHO

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 18, 2011, The NASDAQ OMX PHLX LLC ("PSX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially 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, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 [4] thereunder, proposes to adopt new Rule 3303 as a written policy or procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] 17 CFR 242.200(g); 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) (amending Rules 201 and 200 of Regulation SHO to adopt a short sale price test restriction and "short exempt" marking requirement). *See also* Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010) (extending the compliance date of the amendments to Rules 201 and 200 of Regulation SHO until February 28, 2011).

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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rules 200(g) and 201 of Regulation SHO.[6] The amendments became effective on May 10, 2010, and compliance is required by February 28, 2011.[7] The amendments to Rule 201 of Regulation SHO require trading centers [8] such as PSX to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.[9] PSX is proposing to adopt new Rule 3303 as a written policy and procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.

Proposed Rule 3303(a) defines the terms "covered security," "listing market," and "national best bid" as having the same meaning as such terms have in Rule 201 of Regulation SHO.[10]

Under Proposed Rule 3303(b), entitled "Short Sale Price Test," the System [11] will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more from the security's closing price on the listing market as of the end of regular trading hours on the prior day ("Trigger Price").[12]

Under Proposed Rule 3303(c), Duration of Short Sale Price Test, once triggered by the listing market, the short sale price test restriction shall remain in effect until the next trading day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system,[13] as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period").

Under Proposed Rule 3303(d), Re-pricing of Orders During Short Sale Period, during the Short Sale Period, short sale orders that are limited to the current national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the current national best bid ("Permitted Price"). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders between the PSX bid and offer at the time of receipt will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid. During the Short Sale Period, immediate or cancel ("IOC") orders requiring that all or part of the order be executed immediately will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced. Inter-market sweep orders not marked "short exempt" will be handled in the same manner as IOC orders.

Pursuant to Proposed Rule 3303(e), Execution of Permissible Orders during the Short Sale Period, during the Short Sale Period, the System will execute and display a short sale order without regard to whether the order is at a Permitted Price or higher if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. This determination is consistent with Rule 201(b)(1)(iii)(A) of Regulation SHO.[14] Short sale orders that are entered into the System prior to the Short Sale Period but that are not displayed will be re-priced as described in Proposed Rule 3303(d) as set forth above.

Finally, under Proposed Rule 3303(f), Short Exempt Orders, during the Short Sale Period, the System will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price or higher.[15] The System will accept orders marked "short exempt" at any time when the System is open for order entry regardless of whether the short sale price test has been triggered in the covered security. PSX member firms marking orders "short exempt" in reliance on Rule 201(c) or 201(d) are responsible for ensuring that any such orders meet the criteria of these provisions and are accurately marked as "short exempt." [16]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[17] which requires, among other things, the rules of an exchange to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act [18] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it implements rules adopted by the Commission in Regulation SHO under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[6] *See supra* note 5.

[7] *Id.*

[8] Rule 201(a)(9) states the term "trading center" will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[9] *See* 17 CFR 242.201(b). The amendments to Rule 200(g) of Regulation SHO provide a "short exempt" marking requirement. See 17 CFR 242.200(g).

[10] *See* Rule 201(a) of Regulation SHO. The System will utilize the national best bid from the systems information processor. Rule 201(a)(1) defines "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. 17 CFR 242.201(a)(1). Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." 17 CFR 242.600(b)(47). Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.600(b)(46).

[11] *See* Rule 3301(a). The term "System" shall mean the automated system for order execution and trade reporting owned and operated by PSX.

[12] *See* Rule 201(b)(1)(i) of Regulation SHO. Such execution or display needs to be in compliance with applicable rules concerning minimum pricing increments. *See* 17 CFR 242.612.

[13] *See* 17 CFR 242.201(b)(1)(ii). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.1.

[14] *See* 17 CFR 242.201(b)(1)(iii)(A).

[15] *See* 17 CFR 242.201(b)(1)(iii)(B).

[16] *See* Rules 200(g)(2), 201(c) and 201(d) of Regulation SHO. *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 5.4 and 5.5.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally may not become operative prior to 30 days after the date of filing.[22] However, Rule 19b–4(f)(6)(iii) [23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. PSX has requested that the Commission waive the 30-day operative delay so that it may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change, among other things, implements the amendments to Rules 200(g) and 201 of Regulation SHO which have a February 28, 2011 compliance date.[24] For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–25. 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–Phlx–2011–25 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Cathy H. Ahn,

Deputy Secretary.

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] *Id.*

[24] *See supra* note 5.

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63976; File No. SR–NYSE–2011–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Supplementary Material .20 to Rule 123C To Provide for the Treatment of Short Sale Orders at the Close

February 25, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 24, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially 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 adopt Supplementary Material .20 to Rule 123C (The Closing Procedures) to provide for the treatment of short sale orders at the close, for purposes of execution priority, as orders subject to tick restrictions [4] during a period when a restriction on the prices at which covered securities may be sold short is in effect ("Short Sale Price Test") under NYSE Rule 440B [5] (which implements the provisions of Rule 201 of Regulation

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Orders subject to tick restrictions are sell "plus" and buy "minus" orders. *See* NYSE Rule 13.

[5] Amendments to NYSE Rule 440B to implement the short sale price test restriction requirements of Rule 201 are the subject of a separate rule filing. *See* SR–NYSE–2011–05.

SHO ("Rule 201") under the Act).[6] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.[7] Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,[8] imposes a short sale price test.[9] Amended Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.[10]

Rule 201(b) requires that trading centers,[11] including the NYSE, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid[12] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market[13] for the covered security as of the end of regular trading hours on the prior day.[14] In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the day and the following day (including the close on both days) when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[15]

In order to implement the provisions of Rule 201, the Exchange has proposed amendments to NYSE Rule 440B to establish the protocols for determining when a Short Sale Price Test is to be triggered for a covered security where the NYSE is the listing market. The proposed Rule 440B amendments also provide that, except for certain permissible and short exempt orders,[16] during the period a Short Sale Price Test is in effect for a covered security, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid.

NYSE Rule 123C prescribes the method for determining the closing print to be reported to the Consolidated Tape for each security at the close of trading. Interest executed in the closing transaction is allocated pursuant to NYSE Rule 72 and consistent with the hierarchy of allocation of trading interest in Rule 123C(7). In the hierarchy of allocation, better priced interest[17] must receive an execution in whole or in part ("must execute interest")[18] in order for the security to close. Included in this category are MOC orders without tick restrictions, MOC orders with tick restrictions that are eligible to be executed at a price better than the closing price,[19] better priced limit orders, better priced limit on close ("LOC") orders with or without tick restrictions that are eligible for execution at a better price than the closing price and Crowd interest.[20]

After the "must execute interest" is satisfied, then any limit orders represented in the Display Book[21] at the closing price may be used to offset the remaining imbalance.[22] Next eligible for execution in the hierarchy of allocation for the closing transaction are LOC orders without tick restrictions limited to the closing price, then MOC orders that have tick restrictions which limit the order's price to the price of the

[6] 17 CFR 242.201.

[7] Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO ("T&M FAQs").

[8] The term "covered security" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

[9] 17 CFR 242.201(b).

[10] Rule 201 Adopting Release, 75 FR 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

[11] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[12] The term "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

[13] The term "listing market" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term "listing market" to have the same meaning as the term "listing market" as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). *See also* 17 CFR 242.201(a)(2).

[14] 17 CFR 242.201(b)(1)(i).

[15] 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Rule 201 Adopting Release, 75 FR 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. *See* T&M FAQs, at Q&A 2.2.

[16] *See* paragraphs (f) and (g) of proposed Rule 440B regarding the treatment of permissible and short exempt orders. *See* SR–NYSE–2011–05.

[17] Better priced interest means an order that is priced lower than the closing price (in the case of an order to sell) or priced higher than the closing price (in the case of an order to buy).

[18] A market on close ("MOC") order without tick restrictions must be executed in its entirety at the closing price. Marketable limit orders receive an execution subject to the availability of contra side volume.

[19] References in Rule 123C(7) to orders with tick restrictions mean sell "plus" or buy "minus" orders, as defined in Rule 13.

[20] Crowd interest means verbal floor broker interest at the market entered by the designated market maker ("DMM") to interact with orders in the Display Book. *See* note 21 *infra.*

[21] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and published reports to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[22] DMM interest, including better priced DMM interest entered into the Display Book prior to the closing transaction that is eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.

closing transaction,[23] followed by LOC orders limited to the price of the closing transaction that have tick restrictions, "G" orders,[24] and finally closing offset orders.

The Exchange proposes to establish the execution priority for short sale orders at the close during a period when the Short Sale Price Test is in effect. As provided for in proposed Rule 440B(h)(3), when the Short Sale Price Test is in effect, Exchange systems will, in connection with the closing transaction, re-price all short sale market orders and short sale orders limited to the last published Exchange bid or lower to one minimum price increment above the last published Exchange bid. If the closing price will be at or below the last published Exchange bid, such re-priced short sale orders will not participate in the close. If the closing price is above the last published Exchange bid, the re-priced short sale orders may participate in the closing transaction, depending on whether the proposed closing price is the same as the re-priced order, or if the re-priced order is priced better than the closing price. If the re-priced order is priced better than the closing price, such re-priced short sale order will participate in the closing transaction.[25] If the re-priced order is priced at the same price as the closing price, such re-priced short sale order plus all other short sale orders limited at that price[26] may (but are not required to) participate in the closing transaction consistent with how Rule 123C(7)(b) treats market or limit orders with tick restrictions.

The Exchange therefore proposes to add new Supplementary Material .20 to Rule 123C providing that short sale orders for a covered security during a period when a Short Sale Price Test is in effect will be treated, for purposes of execution at the close under Rule 123C(7)(b), as orders that have tick restrictions.[27] Thus, short sale orders that are eligible to participate in the closing transaction and that are priced at the same price as the closing transaction will be treated in the same manner as sell "plus" and buy "minus" tick restrictive orders priced at the closing price.[28] As a result, re-priced short sale orders priced at the closing price will be eligible for participation at the close following limit orders represented in the Display Book with a price equal to the closing price and LOC orders with a price equal to the closing price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[29] in general, and furthers the objectives of Section 6(b)(5) of the Act,[30] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by establishing, maintaining and enforcing written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at the close in violation of the Short Sale Price Test established in that rule. To that end, the proposed rule change will, among other things, amend the Exchange's procedures for determining the closing price by treating short sale orders as orders subject to tick restrictions during a period when a Short Sale Price Test is in effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[31] and Rule 19b–4(f)(6) thereunder.[32] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[33] and Rule 19b–4(f)(6)(iii) thereunder.[34]

A proposed rule change filed under Rule 19b–4(f)(6)[35] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[36] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request. Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and

[23] For example, the last sale on the Exchange was at a price of $46.00 on a minus tick, the closing price is $46.01, all sell plus MOC orders are limited to the closing price of $46.01 because the closing transaction would be the next plus tick.

[24] *See* Section 11(a)(1)(G) of the Act. G orders are orders for an Exchange member's own account where the member meets a business mix test that requires it to be primarily engaged in the business of underwriting and distributing securities, selling securities to customers, and/or acting as a broker and provided more than 50% of its gross revenues is derived from such businesses and related activities. G orders on the NYSE are required to yield priority, parity and precedence to non-G orders.

[25] *See* Rule 123C(7)(a).

[26] These would include short sale orders that were already priced above the last published Exchange bid.

[27] The Exchange will not be making any changes in its opening and re-opening procedures in connection with the implementation of the short sale price test restrictions of Rule 201. The presence of short sale price test restrictions will have no impact on the priority of orders eligible to participate in openings and re-openings.

[28] *See* NYSE Rule 13 (defining Sell "Plus"-Buy "Minus" Orders). A sell "plus" order is an order to sell a specified amount of stock as long as the price of the trade is not lower than the price of the last sale if the last sale was a plus or zero plus tick, and is not lower than the last sale plus the minimum change in the price if the last sale was a minus or zero minus tick. A buy "minus" order is an order to buy a specified amount of stock as long as the price to be executed is not higher than the price of the last sale if the last sale was a minus or zero minus tick, and is not higher than the price of the last sale less than the minimum change in the price of the stock if the last sale was a plus tick or zero plus tick.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6).

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

designates the proposal as operative upon filing.[37]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE'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–NYSE–2011–06 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4894 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

[37] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63974; File No. SR–NYSEAMEX–2011–08]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 440B (Short Sales) in Order To Implement the Provisions of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934

February 25, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 24, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 440B (Short Sales) in order to implement the provisions of Rule 201 of Regulation SHO ("Rule 201")[4] under the Act which, if triggered, imposes a restriction on the prices at which securities may be sold short ("Short Sale Price Test"). Among other things, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. The proposed rule amendment would establish procedures for the Exchange, as a listing market, to determine that a Short Sale Price Test has been triggered for a covered security. The proposed rule amendment would also establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the Short Sale Price Test is triggered, including establishing what types of short sale orders will be re-priced to achieve a permitted price, in accordance with Rule 201, during the period in which a Short Sale Price Test is in effect ("Short Sale Period").[5] Amended NYSE Amex Equities Rule 440B would also establish the Exchange's procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt." Further, the proposed rule amendment would establish the Exchange's procedures regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions. The proposed rule amendment would also make minor technical changes to the Supplementary Material to Rule 440B.[6] Finally, the proposed rule amendment would also establish Exchange procedures for addressing situations where the Exchange determines that the Short Sale Price Test for a covered security was triggered by a "clearly erroneous" execution as that term is defined in NYSE Amex Equities Rule 128.[7]

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.201.

[5] *See* notes 24–26 *infra* and accompanying text.

[6] Supplementary Material to Rule 440B is proposed to be amended to (a) delete an incorrect reference to Rule 440B(c) (in .11) and (b) to permit orders to be marked "short exempt" in accordance with Rules 200(g)(2) and 201 of Regulation SHO (in .12). The remaining provisions in Supplementary Material are not proposed to be modified and will remain in effect.

[7] *See infra* note 23 and accompanying text regarding "clearly erroneous" trades and proposed Rule 440B(d)(1). The proposed rule amendment would establish the duration of the Short Sale Price Test. *See infra* note 22 and accompanying text. In addition, the proposed rule amendment would provide for an Exchange determination that a Short Sale Price Test has been triggered for covered securities for which the Exchange is the listing market. *See infra* notes 21–22 and accompanying text.

The Exchange also proposes to amend NYSE Amex Equities Rule 900 (Off-Hours Trading: Applicability and Definitions) to apply Rule 440B (including the short sale price test restrictions of Rule 201) to transactions in the Off-Hours Trading Facility (by deleting the current exclusion for Rule 440B). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.[8] Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,[9] imposes a Short Sale Price Test.[10] Amended Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.[11]

Rule 201(b) requires that trading centers,[12] including NYSE Amex, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid [13] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market [14] for the covered security as of the end of regular trading hours on the prior day ("Trigger Price").[15] In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[16]

In the Rule 201 Adopting Release, the Commission stated that it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline, and will facilitate the ability of long sellers to sell first upon such a decline.[17] The Commission further stated that this approach establishes a narrowly-tailored Rule that strikes an appropriate balance between its goal of preventing potential short sale abuses and the need to limit impediments to the normal operations of the market,[18] and as such, the Rule will help address the erosion of investor confidence in markets generally.[19] For these reasons, the Exchange seeks to amend its short sale rule to comply with the Commission's amendment of Rule 201.

Paragraph (b) of the proposed rule makes clear that, in compliance with Rule 201, in the event a covered security experiences a decrease in price of 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day, except for certain permissible and short exempt orders,[20] Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid.

Where the Exchange is the listing market for a covered security, Exchange systems will determine whether the short sale price test restrictions of Rule 201 have been triggered (*i.e.,* whether a transaction in a covered security has occurred at a Trigger Price) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.[21] The Trigger Price of a covered security will not be calculated until the Exchange opens trading for that security. In circumstances where a covered security did not trade on the Exchange on the prior trading day (for example, due to a trading halt, trading suspension, or otherwise), the Exchange will base its determination of the Trigger Price on the last sale price on the Exchange for that security on the most recent day on which the security did trade.

Once a Short Sale Price Test is triggered by the listing market, the Short

[8] Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[9] The term "covered security" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

[10] 17 CFR 242.201(b).

[11] Rule 201 Adopting Release, 75 FR 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

[12] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[13] The term "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

[14] The term "listing market" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term "listing market" to have the same meaning as the term "listing market" as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). *See also* 17 CFR 242.201(a)(2).

[15] 17 CFR 242.201(b)(1)(i).

[16] 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Rule 201 Adopting Release, 75 FR 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.2 ("T&M FAQs").

[17] Rule 201 Adopting Release, 75 FR 11232.

[18] Rule 201 Adopting Release, 75 FR 11232, 11252.

[19] *Id.*

[20] *See* paragraphs (f) and (g) of proposed Rule 440B regarding the treatment of permissible and short exempt orders.

[21] 17 CFR 242.201(b)(3). *See also* Rule 201(a)(6) of Regulation SHO, which defines the term "plan processor" to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. *See* 15 U.S.C. 78c(a)(22).

Sale Price Test will remain in effect until the close of trading on the next trading day.[22] If, however, the Exchange determines that the Short Sale Price Test for a covered security was triggered because of a clearly erroneous execution,[23] the Exchange may lift the Short Sale Price Test before the Short Sale Period ends for securities for which the Exchange is the listing market or, for securities listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution. Similarly, if the Exchange determines that the prior day's closing price for a covered security for which the Exchange is the listing market is incorrect in Exchange systems and resulted in an incorrect determination that the short sale price test restriction had been triggered, the Exchange may correct the prior day's closing price and lift the Short Sale Price Test before the Short Sale Period ends.

During the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid ("Permitted Price") to permit their execution at a price that is compliant with the Short Sale Price Test. Consistent with Rule 201,[24] the Permitted Price for securities for which the national best bid is $1 or more is $.01 above the national best bid; the Permitted Price for securities for which the national best bid is below $1 is $.0001 above the national best bid.[25]

To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.[26] Also, during the Short Sale Period, immediate or cancel ("IOC") orders will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced. Inter-market sweep orders not marked "short exempt" will be handled in the same manner as IOC orders.[27] In addition, during the Short Sale Period, Exchange systems will mark certain designated market maker ("DMM") sale interest as "long" or "short" on behalf of the DMM unit based on position information provided by the DMM unit.[28] For such DMM interest, after a security has opened for trading, Exchange systems (i) will not execute or display such DMM short sale interest [29] that is priced at or below the current national best bid and will cancel any such DMM interest, and (ii) will cancel any such DMM interest if the execution of the full amount of all DMM sell interest at a price at or below the national best bid would result in a change in the DMM position from long to short.

During the Short Sale Period, Exchange systems will execute and display a short sale order without regard to price if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid.[30] Un-displayed short sale orders that are entered into the Exchange's systems prior to the Short Sale Period will be re-priced as described above.

As permitted by Rule 201, during the Short Sale Period, Exchange systems will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price.[31] Exchange systems will also accept orders marked "short exempt" at any time when such systems are open for order entry, regardless of whether the Short Sale Price Test has been triggered.[32]

In addition, the proposed amendments to Rule 440B will also provide for calculation of the Permitted Price and re-pricing of short sale orders with respect to any single-priced opening, re-opening or closing transaction during the Short Sale Period. Paragraph (h) of Rule 440B, as proposed, would provide that, with respect to the execution of short sale orders in a covered security in any single-priced opening, re-opening or closing transaction during the Short Sale Period, Exchange systems will re-price short sale orders in a covered security as follows: (1) Opening—one minimum price increment above the national best bid at 9:30 a.m.; (2) Re-opening following a halt or pause in trading—one minimum price increment above the last published Exchange bid prior to such halt or pause; and (3) Closing—one minimum price increment above the last published Exchange bid prior to the close.[33] For purposes of paragraph (h) the term "minimum price increment" shall mean $.01 for securities for which the national best bid or the published Exchange bid, as the case may be, is $1 or more, and $.0001 for securities for which the national best bid or the published Exchange bid, as the case may be, is below $1.

Paragraph (h) of Rule 440B, as proposed, also provides that, during a Short Sale Period, Exchange systems will not execute a short sale order for a covered security in a single-priced opening transaction at or below the national best bid at 9:30 a.m.,[34] and will not execute a short sale order for a covered security in a single-priced re-opening or closing transaction at or below the last published Exchange bid prior to a halt or pause in trading (in the case of a single-priced re-opening transaction), or at or below the last published Exchange bid prior to the

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[22] The Short Sale Price Test will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated. This may extend beyond regular trading hours. T&M FAQs, *supra* note 16, at Q&A 2.1.

[23] Determination of a "clearly erroneous" transaction will be made in accordance with Exchange Rule 128.

[24] Rule 201 Adopting Release, 75 FR 11232, 11247.

[25] 17 CFR 242.612.

[26] The following example illustrates the operation of Exchange systems in this situation. Assume the national best bid is 10.10 and a sell short order priced at 10.10 arrives at the Exchange during the Short Sale Period. The order will be re-priced to 10.11 and will rest on the limit order book. The national best bid then rises to 10.11. If that short sale order was displayed on the offer side, that order will remain priced at 10.11. *See* note 30 *infra* and accompanying text. If the order was not displayed at the customer's instruction, then the order will be re-priced to 10.12 because it cannot be executed at the national best bid. *See* T&M FAQs, *supra* note 16, at Q&A 4.1.

[27] *See* Exchange Rule 13 for the definition of inter-market sweep order.

[28] Under Rule 200(g) of Regulation SHO, broker-dealers are responsible for proper marking of orders. However, with respect to certain trading by DMM units, Exchange systems will monitor DMM unit positions on a real-time basis during the trading day and will be responsible for order marking on behalf of DMM units for certain trading entered through Exchange systems. This will be done by receiving a position report prior to the opening of trading and updating DMM unit positions based on position information provided by the DMM unit and/or Exchange trade executions during the day. DMM units will be responsible for properly marking any DMM interest entered into Exchange systems for which the Exchange does not monitor or update the DMM unit's position. Exchange systems will treat such DMM interest that is marked "short" the same as how it treats other interest, as provided for in proposed Rule 440B(e), and will not cancel such DMM interest as provided for in proposed Rule 440B(e)(2).

[29] *See* Exchange Rules 104(b) and 1000 regarding DMM trading algorithms and automatic execution.

[30] *See also* 17 CFR 242.201(b)(1)(iii)(A).

[31] *See also* 17 CFR 242.201(b)(1)(iii)(B).

[32] Exchange systems will also follow the guidance in the T&M FAQs. *See supra* note 16.

[33] *See* Letter from James Brigagliano, Deputy Director, Division of Trading & Markets, SEC, to Janet McGinness, Senior Vice President and Secretary, NYSE Euronext, February 7, 2011.

[34] Short sale orders designated for execution only at the opening will be cancelled if not executed at the opening. Other short sale orders will remain on the Display Book for execution during the trading day if at a Permitted Price or higher and may be repriced throughout the day, consistent with proposed Rule 440B(e).

close (in the case of a single-priced closing transaction).

The Exchange is also proposing changes to the Supplementary Material to Rule 440B. First, in .11, the Exchange is proposing to delete an outdated reference to Rule 440B(c). Second, the Exchange is proposing to amend .12 to add language permitting orders to be marked "short exempt" in accordance with Rule 200(g)(2) and Rule 201 of Regulation SHO. Under amended .12, an order may be marked "short exempt" if the broker-dealer had a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d) of Regulation SHO.[35] An order may also be marked "short exempt" if it is entered during a Short Sale Period and meets the conditions specified in Rule 201(c) of Regulation SHO.[36]

Finally, the Exchange also proposes to amend NYSE Amex Equities Rule 900 regarding its Off-Hours Trading Facility to apply Rule 440B (including the short sale price test restrictions of Rule 201) to transactions in the Off-Hours Trading Facility (by deleting the current exclusion for Rule 440B). An obsolete reference to the Intermarket Trading System ("ITS") in Rule 900(b) will also be deleted.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[37] in general, and furthers the objectives of Section 6(b)(5) of the Act,[38] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by establishing, maintaining and enforcing written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the Short Sale Price Test established in that rule. To that end, the proposed rule change will, among other things, establish the Exchange's procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[39] and Rule 19b–4(f)(6) thereunder.[40] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[41] and Rule 19b–4(f)(6)(iii) thereunder.[42]

A proposed rule change filed under Rule 19b–4(f)(6)[43] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[44] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[45] Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2011–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2011–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

[35] 17 CFR 242.201(d); T&M FAQs, *supra* note 16, at Q&A 5.4.

[36] 17 CFR 242.201(c); *see also* T&M FAQs, *supra* note 16, at Q&A 4.2 and 5.5.

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78s(b)(3)(A)(iii).

[40] 17 CFR 240.19b–4(f)(6).

[41] 15 U.S.C. 78s(b)(3)(A)(iii).

[42] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6)(iii).

[45] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Reference Room, 100 F Street, NE., Washington, DC 20549–1090. 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–NYSEAMEX–2011–08 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4892 Filed 3–3–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63972; File No. SR–NYSEAMEX–2011–09]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Supplementary Material .20 to NYSE Amex Equities Rule 123C To Provide for the Treatment of Short Sale Orders at the Close

February 25, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 24, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially 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 adopt Supplementary Material .20 to NYSE Amex Equities Rule 123C (The Closing Procedures) to provide for the treatment of short sale orders at the close, for purposes of execution priority, as orders subject to tick restrictions[4] during a period when a restriction on the prices at which covered securities may be sold short is in effect ("Short Sale Price Test") under NYSE Amex Equities Rule 440B[5] (which implements the provisions of Rule 201 of Regulation SHO ("Rule 201") under the Act). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.[6] Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,[7] imposes a short sale price test.[8] Amended Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.[9]

Rule 201(b) requires that trading centers,[10] including NYSE Amex, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid[11] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market[12] for the covered security as of the end of regular trading hours on the prior day.[13] In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the day and the following day (including the close on both days) when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[14]

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[46] 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] Orders subject to tick restrictions are sell "plus" and buy "minus" orders. *See* NYSE Amex Equities Rule 13.

[5] Amendments to NYSE Amex Equities Rule 440B to implement the short sale price test restriction requirements of Rule 201 are the subject of a separate rule filing. *See* SR–NYSEAmex–2011–08.

[6] Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO ("T&M FAQs").

[7] The term "covered security" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

[8] 17 CFR 242.201(b).

[9] Rule 201 Adopting Release, 75 FR 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

[10] Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[11] The term "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

[12] The term "listing market" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term "listing market" to have the same meaning as the term "listing market" as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). *See also* 17 CFR 242.201(a)(2).

[13] 17 CFR 242.201(b)(1)(i).

[14] 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Rule 201 Adopting Release, 75 FR 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. *See* T&M FAQs, at Q&A 2.2.

In order to implement the provisions of Rule 201, the Exchange has proposed amendments to NYSE Amex Equities Rule 440B to establish the protocols for determining when a Short Sale Price Test is to be triggered for a covered security where the Exchange is the listing market. The proposed Rule 440B amendments also provide that, except for certain permissible and short exempt orders,[15] during the period a Short Sale Price Test is in effect for a covered security, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid.

NYSE Amex Equities Rule 123C prescribes the method for determining the closing print to be reported to the Consolidated Tape for each security at the close of trading. Interest executed in the closing transaction is allocated pursuant to NYSE Amex Equities Rule 72 and consistent with the hierarchy of allocation of trading interest in NYSE Amex Equities Rule 123C(7). In the hierarchy of allocation, better priced interest [16] must receive an execution in whole or in part ("must execute interest") [17] in order for the security to close. Included in this category are MOC orders without tick restrictions, MOC orders with tick restrictions that are eligible to be executed at a price better than the closing price,[18] better priced limit orders, better priced limit on close ("LOC") orders with or without tick restrictions that are eligible for execution at a better price than the closing price and Crowd interest.[19]

After the "must execute interest" is satisfied, then any limit orders represented in the Display Book [20] at the closing price may be used to offset the remaining imbalance.[21] Next eligible for execution in the hierarchy of allocation for the closing transaction are LOC orders without tick restrictions limited to the closing price, then MOC orders that have tick restrictions which limit the order's price to the price of the closing transaction,[22] followed by LOC orders limited to the price of the closing transaction that have tick restrictions, "G" orders,[23] and finally closing offset orders.

The Exchange proposes to establish the execution priority for short sale orders at the close during a period when the Short Sale Price Test is in effect. As provided for in proposed NYSE Amex Equities Rule 440B(h)(3), when the Short Sale Price Test is in effect, Exchange systems will, in connection with the closing transaction, re-price all short sale market orders and short sale orders limited to the last published Exchange bid or lower to one minimum price increment above the last published Exchange bid. If the closing price will be at or below the last published Exchange bid, such re-priced short sale orders will not participate in the close. If the closing price is above the last published Exchange bid, the re-priced short sale orders may participate in the closing transaction, depending on whether the proposed closing price is the same as the re-priced order, or if the re-priced order is priced better than the closing price. If the re-priced order is priced better than the closing price, such re-priced short sale order will participate in the closing transaction.[24] If the re-priced order is priced at the same price as the closing price, such re-priced short sale order plus all other short sale orders limited at that price [25] may (but are not required to) participate in the closing transaction consistent with how NYSE Amex Equities Rule 123C(7)(b) treats market or limit orders with tick restrictions.

The Exchange therefore proposes to add new Supplementary Material .20 to NYSE Amex Equities Rule 123C providing that short sale orders for a covered security during a period when a Short Sale Price Test is in effect will be treated, for purposes of execution at the close under NYSE Amex Equities Rule 123C(7)(b), as orders that have tick restrictions.[26] Thus, short sale orders that are eligible to participate in the closing transaction and that are priced at the same price as the closing transaction will be treated in the same manner as sell "plus" and buy "minus" tick restrictive orders priced at the closing price.[27] As a result, re-priced short sale orders priced at the closing price will be eligible for participation at the close following limit orders represented in the Display Book with a price equal to the closing price and LOC orders with a price equal to the closing price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by establishing, maintaining and enforcing written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at

[15] *See* paragraphs (f) and (g) of proposed Rule 440B regarding the treatment of permissible and short exempt orders. *See* SR–NYSEAmex–2011–08.

[16] Better priced interest means an order that is priced lower than the closing price (in the case of an order to sell) or priced higher than the closing price (in the case of an order to buy).

[17] A market on close ("MOC") order without tick restrictions must be executed in its entirety at the closing price. Marketable limit orders receive an execution subject to the availability of contra side volume.

[18] References in NYSE Amex Equities Rule 123C(7) to orders with tick restrictions mean sell "plus" or buy "minus" orders, as defined in Rule 13.

[19] Crowd interest means verbal floor broker interest at the market entered by the designated market maker ("DMM") to interact with orders in the Display Book. *See* note 20 *infra.*

[20] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and published reports to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[21] DMM interest, including better priced DMM interest entered into the Display Book prior to the closing transaction that is eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.

[22] For example, the last sale on the Exchange was at a price of $46.00 on a minus tick, the closing price is $46.01, all sell plus MOC orders are limited to the closing price of $46.01 because the closing transaction would be the next plus tick.

[23] *See* Section 11(a)(1)(G) of the Act. G orders are orders for an Exchange member's own account where the member meets a business mix test that requires it to be primarily engaged in the business of underwriting and distributing securities, selling securities to customers, and/or acting as a broker and provided more than 50% of its gross revenues is derived from such businesses and related activities. G orders on the Exchange are required to yield priority, parity and precedence to non-G orders.

[24] *See* NYSE Amex Equities Rule 123C(7)(a).

[25] These would include short sale orders that were already priced above the last published Exchange bid.

[26] The Exchange will not be making any changes in its opening and re-opening procedures in connection with the implementation of the short sale price test restrictions of Rule 201. The presence of short sale price test restrictions will have no impact on the priority of orders eligible to participate in openings and re-openings.

[27] *See* NYSE Amex Equities Rule 13 (defining Sell "Plus"–Buy "Minus" Orders). A sell "plus" order is an order to sell a specified amount of stock as long as the price of the trade is not lower than the price of the last sale if the last sale was a plus or zero plus tick, and is not lower than the last sale plus the minimum change in the price if the last sale was a minus or zero minus tick. A buy "minus" order is an order to buy a specified amount of stock as long as the price to be executed is not higher than the price of the last sale if the last sale was a minus or zero minus tick, and is not higher than the price of the last sale less than the minimum change in the price of the stock if the last sale was a plus tick or zero plus tick.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

the close in violation of the Short Sale Price Test established in that rule. To that end, the proposed rule change will, among other things, amend the Exchange's procedures for determining the closing price by treating short sale orders as orders subject to tick restrictions during a period when a Short Sale Price Test is in effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [32] and Rule 19b–4(f)(6)(iii) thereunder.[33]

A proposed rule change filed under Rule 19b–4(f)(6) [34] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[35] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[36] Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMEX–2011–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2011–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090. 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–NYSEAMEX–2011–09 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4890 Filed 3–3–11; 8:45 am]

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[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6).

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6)(iii).

[36] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63970; File No. SR–BYX–2011–004]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Adopt BYX Rule 11.21, entitled "Input of Accurate Information"

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2011, BATS Y-Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the

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

[2] 17 CFR 240.19b–4.

Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it 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 adopt new BYX Rule 11.21 to require Members to identify each order accurately as a Principal, Agency, or Riskless Principal Order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new BYX Rule 11.21 for the purpose of increasing transparency and to enhance the surveillance database and audit trail of transaction data used by the Exchange in surveillance of its market. The proposed rule change would require Members to identify the capacity of each order accurately as a Principal, Agency, or Riskless Principal Order. For purposes of surveillance, the Exchange currently identifies the capacity of each order as Principal, Agency, or Riskless Principal; however, several other capacities are accepted upon order entry, including no response, which are thereafter mapped to one of the above-listed order capacities. By limiting the order capacity upon entry to Principal, Agency, or Riskless Principal and requiring Members to accurately submit an order capacity for each order, the Exchange will be able to more precisely identify the type of order received and more effectively surveil for abusive trading.

BYX does not have a rule that makes an explicit statement regarding a Member's obligation to input accurate information into the System. Notwithstanding, BYX believes that disciplinary cases against Members entering inaccurate or incomplete information may be brought appropriately under BYX Rule 3.1, which requires Members to observe high standards of commercial honor and just and equitable principles of trade. Rule 3.1 protects the investing public and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. Because of the regulatory importance of accurate information input in the System, BYX believes a rule that directly addresses Members' obligation to provide accurate information is warranted. The proposed rule makes clear Members' obligation to input accurate information into the System and that failure to do so would be considered a violation of BYX Rules.

BYX notes that the Commission has previously approved rules proposed by the Nasdaq Stock Market LLC ("Nasdaq") requiring participants to ensure that accurate information is entered into Nasdaq's system, including but not limited to the capacity of the participant.[5] Thus, the proposed rule change would bring BYX Rules in line with those of other self-regulatory organizations.

In order to allow Members sufficient time to review and complete any systems changes necessitated by this filing, the Exchange has proposed an operative date of April 4, 2011.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because 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 to protect investors and the public interest. Specifically, the changes proposed herein will serve to promote the accuracy of information input into the Exchange. Accurate information is necessary for the efficient and fair operation of the Exchange, and will assist the Exchange in surveilling the markets for fraudulent activity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release 59547 (March 10, 2009), 74 FR 11386 (March 17, 2009).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 15 U.S.C. 78s(b)(3)(C).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BYX–2011–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2011–004 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4888 Filed 3–3–11; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63967; File No. SR–Phlx–2011–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Amendments to Rules 200(g) and 201 of Regulation SHO Applicable to Complex Orders

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 23, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1080.08 respecting complex orders to reflect the marking requirements of Regulation SHO and to address the handling of certain orders marked "short" in compliance with Rule 201 of Regulation SHO, as explained further below.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Exchange received approval from the Commission to make various enhancements to its complex orders system, including to accept complex orders where one component is the underlying security of the options components.[3] Specifically, the underlying stock or ETF can now be one component of a complex order.[4] Nasdaq Options Services LLC ("NOS"), a registered broker-dealer and member of Financial Industry Regulatory Authority, is responsible for the execution of the stock or ETF component of a complex order as agent of the stock or ETF component.[5] This is described in Rule 1080.08(h). A complex order with one component that is a stock or ETF is received by the Exchange with a net debit or credit price. The individual option leg(s) and stock/ETF component prices are not specified; rather, there is a single net debit or credit price on the order which is used by Phlx and NOS to determine the price of each component, including the stock/ETF. Specifically, although Phlx is calculating the price of the options components, a sophisticated algorithm is simultaneously causing NOS to calculate and execute the stock or ETF component of the Complex Order, which has been electronically communicated to NOS by the Exchange. Thus, because the execution of one component is contingent upon the execution of all others, the entire package is processed as a single transaction and both the option leg and stock/ETF components are simultaneously processed.

In the Complex Order rule filing, the Exchange explained that with respect to short sale regulation, the proposed handling of the stock/ETF component of a complex order did not raise any issues of compliance with the currently operative provisions of Regulation SHO.[6] When a complex order has a

[3] *See* Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (SR–Phlx–2010–157) ("Complex Order rule filing").

[4] A complex order is a an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security or a stock-option order, priced as a net debit or credit, based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. *See* Rule 1080.08(a).

[5] The NASDAQ OMX Group, Inc. owns both the Exchange and NOS; therefore, the Exchange and NOS are affiliates.

[6] 17 CFR 242.200 *et seq.*

stock/ETF component, member organizations must mark, pursuant to Regulation SHO, whether that order involves a long or short sale.[7] The Phlx trading System will accept complex orders with a stock/ETF component marked to reflect either a long or short position; specifically, orders not currently marked as "long" or "short" are rejected by the Phlx trading System.

In 2010, the Commission amended Rule 201 and Rule 200(g) of Regulation SHO under the Act.[8] The amendments to Rule 201 adopt a short sale-related circuit breaker that, if triggered, imposes a restriction on the prices at which covered securities may be sold short ("short sale price test restriction").[9] Specifically, Rule 201 requires a trading center [10] to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security [11] at a price that is less than or equal to the current national best bid [12] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market [13] for the covered security as of the end of regular trading hours on the prior day; [14] and impose these requirements for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[15] The amendments to Rule 200(g) provide that a broker-dealer may mark certain qualifying short sale orders "short exempt." [16] Thereafter, the Commission extended the compliance date for the amendments to Rule 201 and Rule 200(g) until February 28, 2011.[17] The Exchange is filing this proposed rule change to address the new amendments to Regulation SHO.

Accordingly, the purpose of the proposed rule change is to explain the Exchange's handling of stock/ETF sell components entered as part of a complex order in accordance with the amendments to Regulation SHO. In particular, the Exchange is proposing to provide that, if the stock/ETF leg of a complex order submitted to the Phlx trading System is a sell order, then the stock/ETF leg must be marked "long," "short," or "short exempt" in compliance with Rule 200(g) of Regulation SHO; if it is not so marked, the order will be rejected. Thus, the Exchange will now accept complex orders marked "short exempt" and Rule 1080.08(b)(iv) is being adopted to reflect this.[18] The Exchange and NOS, as trading centers, must comply with Rule 201(b)(1)(iii)(B), which provides that a trading center must establish, maintain, and enforce written policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked "short exempt" without regard to whether the order is at a price that is less than or equal to the current national best bid.[19]

Furthermore, the Exchange proposes to amend Rule 1080.08(h) to describe the handling of short sales involving the stock/ETF leg of a complex order submitted to its Phlx trading System. When the short sale price test restriction is triggered for a covered security, NOS will not execute or display [20] a short sale order in the underlying covered security component of a complex order if the price is equal to or below the current national best bid. However, NOS will execute a short sale order in the underlying covered security component of a complex order if such order is marked "short exempt," regardless of whether it is at a price that is equal to or below the current national best bid. If NOS cannot execute the underlying covered security component of a complex order in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the complex order to the entering member organization. When a short sale price test restriction is triggered in a covered security, orders in that security marked "short" may be executed by NOS if the order is at a price above the current national best bid at the time of execution. Thus, the proposal is narrowly tailored to address Rule 201 by only cancelling orders marked "short" when a short sale price test restriction is triggered in the covered security and the sell order is at a price equal to or below the current national best bid at the time of execution.

The Exchange believes that this approach is consistent with Rule 201. Under this proposal, the Exchange and NOS, as trading centers, will prevent the execution or display of a short sale of the stock/ETF component of a complex order priced at or below the current national best bid when the short sale price test restriction is triggered. Specifically, while the Exchange and NOS are determining, respectively, the prices of the options component and of the stock or ETF component of the complex order, as described above, NOS will check the current national best bid of the stock or ETF component at the time of execution. The execution of one component is contingent upon the execution of all other components and once a complex order is accepted and validated by the Phlx trading System, the entire package is processed as a single transaction and both the option leg and stock/ETF components are simultaneously processed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(5) of the Act [22] in particular, in that it is designed to promote just and equitable principles of trade, and, in general to protect investors and the public interest, by providing clarity on the short sale order handling procedures of the stock/ETF component of a complex order when a short sale price test restriction is in effect for a covered security. Furthermore, the Exchange believes that the proposed rule change is consistent with Regulation SHO in that it provides for the handling of short exempt orders as well as short sale orders when the short sale price test restriction is triggered.

[7] 17 CFR 242.200(g).

[8] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

[9] 17 CFR 242.201.

[10] The term "trading center" is defined in Rule 201(a)(9) of Regulation SHO. 17 CFR 242.201(a)(9). Both the Exchange and NOS are "trading centers" within the definition of Rule 201(a)(9).

[11] The term "covered security" is defined in Rule 201(a)(1) as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS. 17 CFR 242.201(a)(1). *See also* 17 CFR 242.600(b)(47).

[12] The term "national best bid" is defined in Rule 201(a)(4). 17 CFR 242.201(a)(4).

[13] The term "listing market" is defined in Rule 201(a)(3). 17 CFR 242.201(a)(3).

[14] 17 CFR 242.201(b)(1)(i).

[15] 17 CFR 242.201(b)(1)(ii).

[16] 17 CFR 242.200(g)(2).

[17] *See* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date of the amendments to Rules 201 and 200(g) of Regulation SHO from November 10, 2010 until February 28, 2011).

[18] The Exchange notes that a broker or dealer may mark a sell order "short exempt" only if the provisions of Rule 201(c) or (d) are met. *See* 17 CFR 242.200(g)(2). Since NOS and the Exchange do not display the stock or ETF portion of a complex order, *see infra* note 20, a broker-dealer should not mark the short sale order "short exempt" under Rule 201(c). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 4.2, 5.4 and 5.5.

[19] 17 CFR 242.201(b)(1)(iii)(B).

[20] The stock or ETF portion of a complex order is not displayed as an order, because the complex order as a whole is handled as a single order with multiple contingencies.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder. The Exchange has requested that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b–4(f)(6)(iii) [25] so that the Exchange may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change, among other things, implements the amendments to Rules 200(g) and 201 of Regulation SHO which have a February 28, 2011 compliance date.[26] For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–27. 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–Phlx–2011–27 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4885 Filed 3–3–11; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* note 17.

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision and an extension to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202–395–6974,
E-mail address:
OIRA_Submission@omb.eop.gov

(SSA)

Social Security Administration,
DCBFM,
Attn: Reports Clearance Officer,
1333 Annex Building,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410–965–6400,
E-mail address: *OPLM.RCO@ssa.gov*

SSA submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 4, 2011. You can obtain a copy of the OMB clearance

packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Request for Social Security Earnings Information—20 CFR 404.810 and 401.100—0960–0525.* The Social Security Act permits wage earners, or their authorized representative, to request Social Security earnings information from SSA using Form SSA–7050. SSA uses the information to verify the requestor's right to access the information and to produce the earnings statement. The respondents are wage earners and their authorized representatives.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 60,400.

Frequency of Response: 1.

Average Burden per Response: 11 minutes.

Estimated Annual Burden: 11,073 hours.

2. *Methods for Conducting Personal Conferences When Waiver of Recovery of a Title II or Title XVI Overpayment Cannot Be Approved—20 CFR 404.506(e)(3), 404.506(f)(8), 416.557(c)(3), and 416.557(d)(8)—0960–0769.* SSA conducts personal conferences when we cannot approve a waiver of recovery of a title II or title XVI overpayment. Social Security beneficiaries and Supplemental Security Income (SSI) recipients have the right to request a waiver of recovery and automatically schedule a personal conference if we cannot approve their requests for waiver of overpayment. We conduct these conferences face-to-face, by telephone, or by video teleconference.

Social Security beneficiaries and SSI recipients, or their representatives, may provide documents to demonstrate they are without fault in causing the overpayment and do not have the ability to repay the debt. They may submit these documents with Form SSA–632 (OMB No. 0960–0037) Request for Waiver of Overpayment Recovery; Form SSA–795 (OMB No. 0960–0045), Statement of Claimant or Other Person; or personal statement submitted by mail, telephone, personal contact, fax, or e-mail. This information collection satisfies the request requirements for waiver of recovery of an overpayment and allows individuals to pursue an administrative appeal via personal conference. We use the information to determine whether to grant or deny a waiver request. Respondents are Social Security beneficiaries and SSI recipients or their representatives seeking reconsideration of an SSA waiver decision. Note: This is a correction notice. When SSA published the 60-day **Federal Register** Notice for this collection on December 22, 2010 at 75 FR 80563, the burden figures we reported were correct at that time. However, we have since received updated burden data that we are reporting in the new burden chart below

Title/section and collection description	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Personal conference 404.506(e)(3) and 404.506(f)(8) submittal of additional documents for consideration at personal conferences.	50,000	1	30	25,000
Personal conference 416.557(c)(3) and 416.557(d)(8) submittal of additional documents for consideration at personal conferences.	67,332	1	30	33,666
Total	117,332			58,666

Dated: March 1, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–4860 Filed 3–3–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–0183]

Access to Aircraft Situation Display (ASDI) and National Airspace System Status Information (NASSI)

AGENCY: Federal Aviation Administration. DOT.

ACTION: Notice of proposed modification to the FAA/Subscriber Memorandum of Agreement (MOA) and request for comments.

SUMMARY: The FAA has tentatively decided that it is in the best interests of the United States Government and the general public to modify Section 9 of the June 1, 2006, MOA for Industry Access to Aircraft Situation Display (ASDI) and National Airspace System Status Information (NASSI) data, between the FAA and Direct Subscribers to ASDI and NASSI data-feeds. In recognition of the fact that the Privacy Act does not protect general aviation operators from public knowledge of their flight information, the FAA proposes to require Direct Subscribers (as a condition of signing the MOA) and Indirect Subscribers (as a condition of signing agreements with Direct Subscribers) to block from ASDI and NASSI data-feeds available to the public any general aviation aircraft registration number for which a Certified Security Concern has been provided to the FAA.

DATES: Comments on the FAA's proposed modification to the MOA must clearly identify the docket number and must be received on or before April 4, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0183 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; US Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at (202) 493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Considerations: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** at 65 FR 19,477–78 (Apr. 11, 2000).

Reviewing the Docket: To read background documents or comments received in this matter, go to *http://www.regulations.gov* at any time or go to the Docket Management Facility in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barry Davis by telephone at (540) 422–4650 or by electronic mail at *barry.davis@faa.gov*.

SUPPLEMENTARY INFORMATION: In carrying out its functions over aircraft flight safety and registration, the FAA requires aircraft to display registration numbers and requires each person filing an instrument flight rules flight plan to provide the FAA with information about the flight, including the aircraft, pilot, departure and landing points, routing, time enroute, and the number of persons on board. 14 CFR 91.169. The FAA incorporates this information (filtered to exclude military and sensitive operations) into a visual system (Aircraft Situation Display) depicting each aircraft and uses it to manage air traffic flow.

The FAA has entered into an MOA with Direct Subscribers to the ASDI and NASSI data-feed. The terms of the MOA also extend to Indirect Subscribers that access the data from the Direct Subscribers and redistribute it to the public. The MOA prescribes the rights and responsibilities of the Subscribers and the FAA. The FAA differentiates the data-feed it provides directly into two classes of users. For Class One users, the FAA provides a near real time data-feed, because the data facilitates aircraft dispatching flexibility and management of user operational resources. Class One users include airlines (including some corporate flight departments and part 135 operators with direct responsibility for dispatching or tracking aircraft), professional aviation organizations with established flight-tracking capabilities, and government users. For Class Two users, the FAA provides a data-feed that has been time-delayed by at least five minutes to entities without a need for near real time positional flight tracking. Class Two users gaining direct access to recorded (historical) format include most general aviation and non-aviation-related organizations.

Under 49 U.S.C. 44103, *note* (Pub. L. 106–181, Apr. 5, 2000), Congress directed the FAA to conform the MOA to require that a Direct Subscriber demonstrate the capability to selectively block the display of any data related to any identified aircraft registration number and that the Direct Subscriber agree to selective blocking upon the Administrator's request. Section 7.2.3 of the MOA conforms to that statutory requirement.

Section 9 of the MOA currently provides a means to protect the "Privacy and Security Interests" of general aviation operators. The FAA currently agrees to accommodate industry initiatives to collect requests from aircraft owners or operators to exclude their aircraft from ASDI and NASSI data-feeds available to the public, either in near real time or in recorded (historical) format. Under Section 9, the FAA accommodates those initiatives for purposes of protecting the privacy and security interests of those aircraft owners. The MOA also requires Direct Subscribers and Indirect Subscribers (through the agreements signed with Direct Subscribers) to respect these privacy and security interests when developing or marketing ASDI or NASSI-based products. Under Section 15, the FAA has the right to terminate the MOA with a Subscriber that does not appropriately protect the security or privacy interests.

We have tentatively determined that it is in the best interests of the United States Government and the general public for the FAA to exclude general aviation aircraft identification numbers from ASDI and NASSI data-feeds available to the public only upon certification by the aircraft owner or operator of a Valid Security Concern (as defined below).

Although the MOA currently provides for the accommodation of privacy and security interests from general aviation aircraft owners and operators upon request and requires the Direct and Indirect Subscribers to consider and respect these interests, as explained in Section 9 of the MOA, the Privacy Act (5 U.S.C. 552a) does not protect general aviation operators from public knowledge of their flight information. A Federal district court has recently held that a list of general aviation aircraft registration numbers does not constitute a trade secret or commercial or financial information under the Freedom of Information Act, 5 U.S.C. 552. *Nat'l Bus. Aviation Ass'n* v. *Fed. Aviation Admin.,* 686 F.Supp.2d 80, 86–87 (D.D.C. 2010). Releasing registration numbers associated with visual displays of flights would not reveal either the identity of the passengers on the aircraft or the purpose of the flight. Accordingly, we do not believe that it is in the public interest to withhold from public disclosure information that is not protected by the Privacy Act and other laws.

We recognize that some general aviation aircraft owners or operators may have a Valid Security Concern (as defined below) regarding their aircraft or aircraft passengers and seek to have the aircraft registration numbers of their aircraft blocked from the public ASDI and NASSI data-feeds. To have the FAA block a general aviation aircraft registration number, an aircraft owner or operator must provide the FAA, at least annually, a written certification (a "Certified Security Concern") that: a) the facts and circumstances establish a Valid Security Concern regarding the security of the owner's or operator's aircraft or aircraft passengers; or b) the general aviation aircraft owner or operator satisfies the requirements for a *bona fide* business-oriented security concern under Treasury Regulation 1.132–5(m), "Employer-provided transportation for security concerns," 26 CFR 1.132–5(m).

A Valid Security Concern is a verifiable threat to person, property or company, including a threat of death, kidnapping or serious bodily harm against an individual, a recent history of violent terrorist activity in the geographic area in which the transportation is provided, or a threat against a company. As with the Treasury Regulations, a generalized concern about safety is not enough to establish a Valid Security Concern. We note that Treasury Regulation 1.132–5(m) covers "working condition fringes" and provides for the exclusion from income of certain employer-provided transportation, including "flights on employer's aircraft for business and personal reasons." The Internal Revenue Service (IRS) permits the exclusion when the flights meet a "*bona fide* business-oriented security concern" that requires an employee to travel on a company plane for business and personal trips. Under the regulation, the employer must have a specific basis for a security concern and establish that concern to the satisfaction of the IRS, through an independent security study or an overall security program. Providing ASDI and NASSI data-feed protection to those general aviation aircraft owners or operators that have *bona fide* business-oriented security concerns under the Treasury Regulations is clear, easy to follow, and justifiable.

Direct and Indirect Subscribers would be prohibited from distributing in a visual display, either in near real time or in recorded (historical) format, information regarding aircraft for which a Certified Security Concern has been

provided to the FAA, and Direct and Indirect Subscribers would be prohibited from using such information in developing or marketing ASDI- or NASSI-based products. Under the operative statutory provision, 49 U.S.C. 44103 *note,* the FAA has the discretion to determine whether aircraft registration numbers should be blocked, and we do not believe that protecting aircraft identities from publicly available access is always in the best interests of the United States Government and the general public.

Accordingly, we seek comment on modifying Section 9 of the MOA as follows:

9. Security Interests

The ASDI and NASSI data includes the near real time position and other flight data associated with civil instrument flight rules (IFR) aircraft. While commercial operators conduct business according to a published listing of service and schedule, general aviation operators do not. It is possible that public knowledge of the ASDI and NASSI data of certain general aviation operators could compromise the security of individuals or property. General aviation aircraft identification numbers must be excluded from public ASDI and NASSI data-feeds in the event a general aviation aircraft owner or operator provides the FAA, at least annually, a written certification (a "Certified Security Concern") that a) the facts and circumstances establish a Valid Security Concern regarding the security of the owner's or operator's aircraft or aircraft passengers; or b) the general aviation aircraft owner or operator satisfies the requirements for a *bona fide* business-oriented security concern under Treasury Regulation 1.132–5(m), "Employer-provided transportation for security concerns," 26 CFR § 1.132–5(m). A Valid Security Concern is a verifiable threat to person, property or company, including a threat of death, kidnapping or serious bodily harm against an individual, a recent history of violent terrorist activity in the geographic area in which the transportation is provided, or a threat against a company. The FAA will no longer accommodate any ASDI- or NASSI-related security or privacy requests, except such Certified Security Concerns. All Direct Subscribers (as a condition of signing this MOA) and Indirect Subscribers (as a condition of signing agreements with Direct Subscribers) must block any general aviation aircraft registration numbers for which Certified Security Concerns have been provided to the FAA. If the FAA determines that any Direct or Indirect Subscriber develops or markets products that violate this provision, the FAA's rights under Section 15 shall apply.

Issued in Washington, DC, on March 1, 2011.

Marc L. Warren,

Deputy Chief Counsel.

[FR Doc. 2011–4955 Filed 3–3–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference (COMSTAC).

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Thursday, March 17, 2011, starting at 2 p.m. Eastern Standard Time. Individuals who plan to participate should contact Susan Lender, DFO, (the Contact Person listed below) by phone or e-mail for the teleconference call in number.

The proposed agenda for this teleconference is to continue the discussion held at the February 15, 2011, teleconference. This discussion looked at the structure of the COMSTAC working groups and the organization of the COMSTAC meetings themselves. The agenda also includes a discussion of the agenda for the May COMSTAC meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by March 14, 2011, so that the information can be made available to COMSTAC members for their review and consideration before the March 17, 2011, teleconference. Written statements should be supplied in the following formats: one hard copy with original signature or one electronic copy via e-mail.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 325, Washington, DC 20591, telephone (202) 267–8029; E-mail *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, on February 24, 2011.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–4587 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet April 26, 2011 from 8:30 a.m. to 5 p.m. The Charting Group will meet April 27 and 28, 2011 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be hosted by Advanced Management Technology, Inc. (AMTI), 1515 Wilson Boulevard, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528.

For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Navigation Products Group (AeroNav Products), Regulatory Support and Coordination Team, AJV–3B, 1305 East West Highway, SSMC4, Station 4643, Silver Spring, MD 20910; telephone: (301) 427–5154, fax: (301) 427–5412.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical

Charting Forum to be held from April 26 through April 28, 2011, from 8:30 a.m. to 5 p.m. at Advanced Management Technology, Inc. (AMTI), 1515 Wilson Boulevard, Arlington VA 22209.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives. Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by April 8, 2011, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section not later than April 8, 2011. Public statements will only be considered if time permits.

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

John A. Moore,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 2011–4958 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL HIGHWAY ADMINISTRATION

[FHWA–DC–EA–2010–01–F]

Notice of Availability of the Finding of No Significant Impact for the Klingle Valley Trail

AGENCIES: Federal Highway Administration, District of Columbia Division; and District Department of Transportation; in cooperation with the National Park Service.

ACTION: Notice of availability of the Finding of No Significant Impact for the Klingle Valley Trail Project.

SUMMARY: The U.S. Federal Highway Administration (FHWA) and the District Department of Transportation (DDOT) as lead agencies, and in cooperation with the National Park Service (NPS), announce the availability of the Finding of No Significant Impact (FONSI) for the Klingle Valley Trail Project, pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and the FHWA Environmental Impact and Related Procedures (23 CFR part 771).

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1990 K Street, NW., Suite 510, Washington, DC 20006–1103, (202) 219–3536; or District Department of Transportation: Austina Casey, Project Manager, Planning, Policy and Sustainability Administration, 2000 14th Street, NW., 7th Floor, Washington, DC 20009, (202) 671–2740.

SUPPLEMENTARY INFORMATION: The proposed action evaluated in the Environmental Assessment (EA) includes construction of a multi-use trail facility within the 0.7 mile barricaded portion of Klingle Road between Porter Street, NW., and Cortland Place, NW.; including the restoration of Klingle Creek.

Four Klingle Valley Trail alternatives, including the No Action Alternative, two options for the Restoration of Klingle Creek, and three options for Access to Rock Creek Trail are analyzed in detail in the EA to meet the project purpose and need. Two options for lighting were also evaluated. Following the public comment period, DDOT identified Alternative 2, 10-Foot Multi-Use Trail (Permeable), as the Preferred Alternative. Furthermore the following options were identified as the preferred options: Klingle Creek Restoration Option B—Full Stream Channel and Bank Stabilization; access to Rock Creek Trail Option C Modified, and Lighting Option B—Pole Lighting.

The FHWA has determined that the Preferred Alternative and options will not have a significant impact on the natural, human or built environment. This Finding of No Significant Impact (FONSI) is based on the findings of the proposed project's Final EA, and comments submitted during preparation of the EA. The Final EA has been evaluated by the FHWA and determined to adequately discuss the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. It provides sufficient evidence and analysis for determining that an environmental impact statement is not required.

Electronic and Hard Copy Access: An electronic copy of this document may be downloaded from the Project Web Site: *http://www.klingletrail.com.* Hard copies of the EA may also be viewed at the following locations:

District Department of Transportation, Planning, Policy, and Sustainability Administration, 2000 14th Street, NW., 7th Floor, Washington, DC 20009.

National Capital Planning Commission Library, 401 9th Street, NW., North Lobby, Suite 500, Washington, DC 20004.

Martin Luther King, Jr. Memorial Library, 901 G Street, NW., Washington, DC 20001.

Cleveland Park Branch Library, 3310 Connecticut Avenue, NW., Washington, DC 20008.

Mount Pleasant Library, 3162 Mt. Pleasant Street, NW., Washington, DC 20010.

Issued: February 28, 2011.

Joseph C. Lawson,

Division Administrator, Federal Highway Administration, District of Columbia Division.

[FR Doc. 2011–4822 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0059]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the OMB for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on December 22, 2010 (75 FR 80542).

DATES: Please send your comments by April 4, 2011. OMB must receive your comments by this date in order to act quickly on the ICR.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Ronk, Program Manager, FMCSA, Office of Enforcement and Program Delivery, Outreach Division/MC–ESO. Telephone (202) 366–1072; or e-mail *brian.ronk@dot.gov.* Department of

Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Dr. Cem Hatipoglu, Transportation Specialist Technology Division/MC–RRT, Office of Analysis, Research and Technology, Telephone (202) 385–2383; or e-mail *cem.hatipoglu@dot.gov.* Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2126–xxxx.

Title: Collection of Qualitative Feedback on Agency Service Delivery.

Form No.: None.

Type of Review: New information collection request.

Respondents: State and local agencies, general public and stakeholders, original equipment manufacturers (OEM) and suppliers to the commercial motor vehicle (CMV) industry, fleets, owner-operators, state CMV safety agencies, research organizations and contractors, news organizations, safety advocate groups, and other Federal agencies.

Estimated Number of Respondents: 14,100.

Estimated Time per Response: Range from 5–30 minutes.

Total Estimated Annual Burden Hours: 3,450.

Frequency of Collection: Generally, on an annual basis.

Abstract: Executive Order 12862 "Setting Customer Service Standards," direct Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector (58 FR 48257, Sept. 11, 1993). In order to work continuously to ensure that our programs are effective and meet our customers' needs, FMCSA seeks to obtain OMB approval of a generic clearance to collect qualitative feedback from our customers on our service delivery. The surveys covered in this generic clearance will provide a means for FMCSA to collect this data direct from our customers. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with FMCSA's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. It will also allow feedback to contribute directly to the improvement of program management. The responses to the surveys will be voluntary and will not involve information that is required by regulations.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for Department of Transportation, Federal Motor Carrier Safety Administration, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Docket Library, Room 10102, Washington, DC 20503, or by e-mail at *oira_submission@omb.eop.gov,* or fax: 202–395–5806.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation (DOT), including whether the information will have practical utility; the accuracy of the DOT's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Issued on: February 25, 2011.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2011–4921 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0418]

Agency Information Collection Activities; Extension of an Approved Information Collection Request: Household Goods Consumer Information Program Assessment Study

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This ICR will be used to collect information on recent interstate household goods shippers' (consumers) awareness of the Household Goods (HHG) Consumer Information Program messages and activities.

DATES: Please send your comments by May 3, 2011. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2010– 0418 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590–0001 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17,

2008 (73 FR 3316), or you may visit *http://edocket.access.gpo..gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Brian Ronk, Program Manager, FMCSA, Office of Safety Programs, Outreach and Education Division. Telephone: (202) 366–1072; or e-mail *brian.ronk@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The purpose of this study is to quantify and assess consumer awareness of the HHG Consumer Information Program. The study will determine the interstate moving public's recognition or knowledge of the Program's activities or messages, such as the "Protect Your Move" campaign. The data will be collected through a telephone survey. Results of the study will not be published, but used for internal research purposes by FMCSA in developing future HHG campaign materials, identifying target audiences, and determining distribution strategies to provide better consumer information to the public.

Title: Household Goods Consumer Information Program Assessment Study.

OMB Control Number: 2126–0045.

Type of Request: Extension of a currently-approved ICR.

Respondents: Public/consumers who have moved household goods from one State to a different State in the U.S. (Interstate Household Goods Shippers).

Estimated Number of Respondents: 1,500.

Estimated Time per Response: The estimated average burden per response is 15 minutes.

Expiration Date: July 31, 2011.

Frequency of Response: This information collection will occur twice within the three year effective period of the OMB clearance; once in the initial year of approval and again two years following the initial data collection.

Estimated Average Total Annual Burden: 250 hours [1,500 respondents × 15 minutes/60 minutes per response × 2 telephone interviews/3 year ICR approval timeframe = 250].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: February 24, 2011.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2011–4924 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Public Meeting

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice: Announcement of Motor Carrier Safety Advisory Committee meeting; request for comment.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces that its Motor Carrier Safety Advisory Committee (MCSAC) will hold a public meeting on March 31 and April 1, 2011, in Louisville, Kentucky. Discussion will focus on Patterns of Safety Violations by Motor Carrier Management (Committee Task 11–01), which was begun at the December 2010 meeting. The meeting will be held as part of the Mid America Trucking Show and will be open to the public for oral comment.

DATES: *March 31, 2011,* 8:30 a.m. to 4 p.m., ET. The last hour of the day will be reserved for public comment.

April 1, 2011, 10 a.m. to 2 p.m., ET. The public may comment throughout the meeting.

ADDRESSES: *Thursday, March 31, 2011:* Galt House Hotel, 1400 N. Fourth Street, Louisville, KY 40202. Willow Room, 3rd Floor, Rivue Tower. *Friday, April 1, 2001:* Kentucky Exposition Center (KEC), 937 Phillips Lane, Louisville, KY 40209. South Wing, Lobby B, Meeting Room C–101.

You may submit written comments identified by Docket ID Number FMCSA–2006–26367 by March 23, 2011, using any of the following methods:

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

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

Hand Delivery or Courier: West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday except Federal holidays.

Fax: 202–493–2251.

Do not submit the same comment by more than one method. To allow effective public participation before the comment period deadline, FMCSA encourages use of the Web site listed above (Federal eRulemaking Portal: *http://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Adviser to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

SUPPLEMENTARY INFORMATION:

Motor Carrier Safety Advisory Committee

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005) required the Secretary of Transportation to establish a Motor Carrier Safety Advisory Committee. The Committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations and operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2).

Patterns of Safety Violations Task (MCSAC Task 11–01)

Section 4133 of SAFETEA–LU allows the Secretary to suspend, amend, or revoke any part of a motor carrier's registration if the Secretary finds that any individual, while serving as an officer of that motor carrier, engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with the Federal Motor Carrier Safety Regulations and/or Hazardous Materials Regulations. Section 4133 defines an officer as "an owner, director, chief executive officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of title attached to these functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier."

Under MCSAC Task 11–01, FMCSA requests that the Committee identify concepts and ideas the Agency should consider in developing standards for Patterns of Safety Violations by Motor Carrier management to assist the Agency with implementing the requirements of section 4113 of SAFETEA–LU. In addition to providing suggestions on definitions and standards of what

constitutes a pattern of safety violations, the Committee is encouraged to offer suggestions to the Administrator regarding: (1) Which company officials should be included under the definition of "officer," and (2) how to ensure that officers responsible for safety violations or their concealment are subjected to appropriate penalties and sanctions under the new system mandated by SAFETEA–LU. In developing its recommendations, the MCSAC should consider principles of due process, including whether additional enforcement and legal staff resources are needed to address the volume of cases and appeals.

The MCSAC began deliberations on these issues at its December 2010 meeting and will complete action on the Patterns of Safety Violations task during the forthcoming meeting. Following the meeting, which may include presentations by experts, the Committee anticipates completion of a letter report to the Administrator.

Issued on: February 28, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–4968 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7918; FMCSA–2000–7363; FMCSA–2000–8398; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2004–19477; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 21 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 23, 2011. Comments must be received on or before April 4, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers, FMCSA–1998–4334; FMCSA–2000–7918; FMCSA–2000–7363; FMCSA–2000–8398; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2004–19477; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066: using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 21 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 21 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David W. Ball
Mark L. Braun
Willie Burnett, Jr.
Donald K. Driscoll
Richard G. Gruber
Richard T. Hatchel
William G. Holland
Bruce G. Horner
Leon E. Jackson
Gerald D. Larson
Thomas F. Marczewski
Roy E. Mathews
James T. McGraw, Jr.
Carl A. Michel, Sr.
William C. Mohr, Sr.
Robert A. Moss
Bobby G. Pool, Sr.
Raymond E. Royer
Ronald J. Watt
Harry C. Weber
Yu Weng

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's

or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 21 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 65 FR 45817; 65 FR 66286; 65 FR 77066; 65 FR 78256; 66 FR 13825; 66 FR 16311; 67 FR 76439; 67 FR 68719; 68 FR 10298; 68 FR 10300; 68 FR 13360; 68 FR 2629; 69 FR 64806; 69 FR 71100; 70 FR 12265; 70 FR 2705; 70 FR 7545; 70 FR 7546; 71 FR 32183; 71 FR 41310; 71 FR 63379; 72 FR 11426; 72 FR 180; 72 FR 1050; 72 FR 1053; 72 FR 1056; 72 FR 7812; 72 FR 9397; 73 FR 36954; 73 FR 78442; 74 FR 8302). Each of these 21 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 4, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 21 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 25, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–4970 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918; FMCSA–2002–12294; FMCSA–2002–12844; FMCSA–2005–20027; FMCSA–2006–25246]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 1, 2011. Comments must be received on or before April 4, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers, FMCSA–2000–7918; FMCSA–2002–12294; FMCSA–2002–12844; FMCSA–2005–20027; FMCSA–2006–25246: using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-

addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 11 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David F. Breuer
Richard S. Cummings
Joseph A. Dean
Elias Gomez, Jr.
Daniel L. Jacobs
Jimmy C. Killian
Jose M. Limon-Alvarado
John W. Montgomery
Billy L. Riddle
Herbert W. Smith
Artis A. Suitt

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 67 FR 46016; 67 FR 57267; 67 FR 68719; 68 FR 13360; 68 FR 2629; 69 FR 51346; 70 FR 12265; 70 FR 16887; 70 FR 2701; 71 FR 50970; 72 FR 11425; 72 FR 180; 72 FR 11426; 72 FR 9397; 74 FR 8842; 74 FR 8302). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 4, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 11 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 1, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–4938 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Exempt Discretionary Program Grants (Section 5309) for Urban Circulator Systems

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Urban Circulator Systems Announcement of Project Selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects funded with unallocated Section 5309 discretionary program funds for the Urban Circulator program in support of DOT's Livability Initiative, which was announced in the Urban Circulator Systems Program notice of funding availability on December 8, 2009. The Urban Circulator program makes funds available to assist State and local governmental authorities in constructing new fixed guideway and corridor-based bus capital projects including the acquisition of real property, the initial acquisition of rolling stock for the systems, the acquisition of rights-of-way, and relocation. Through the Urban Circulator Program grants, FTA will invest in five projects that provide a transportation option that connects urban destinations and fosters the redevelopment of urban spaces into walkable mixed use, high density environments.

FOR FURTHER INFORMATION CONTACT: Successful applicants should contact the appropriate FTA Regional office (Appendix A) for specific information regarding applying for the funds. For general program information on the Urban Circulator program, contact Sherry Riklin, Office of Planning and Environment, at (202) 366–2053, e-mail: *Sherry.Riklin@dot.gov.*

SUPPLEMENTARY INFORMATION: A total of $130,000,000 was available for FTA's Urban Circulator Systems Program. A total of 65 applicants requested $1.1 billion, resulting in high competition for funds. Project proposals were evaluated based on the criteria detailed in the December 8, 2009, Notice of Funding Availability. The projects selected and shown in Table 1 will provide mobility choices, improve economic competitiveness, support existing communities, create partnerships and enhance the value of communities and neighborhoods.

Grantees selected for competitive discretionary funding should work with their FTA regional office to secure FTA approval to advance the project through project development. FTA's approval to advance the Urban Circulator projects through project development and grant award is based on compliance with planning, environmental, and project management requirements which apply to all Federal-aid transit projects, including inclusion of the project in a financially constrained metropolitan long-range transportation plan and metropolitan/state transportation improvement program (TIP/STIP) and completion of the appropriate environmental review required by the National Environmental Policy Act (NEPA). Funds will be obligated to selected projects after a determination by FTA that the grantee has the technical, legal, and financial capacity to construct the proposed project consistent with Federal Transit Law at 49 U.S.C. Chapter 53. The grantee must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out the project supported by the FTA grant. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TEAM application.

These grants will be administered and managed by the FTA regional offices. With the issuance of this **Federal Register** notice, FTA extends pre-award authority for acquisition of real property, utility relocation, demolition, construction, equipment, construction materials, and procurement of vehicles upon completion of the NEPA process. The NEPA process is complete when FTA issues an environmental Record of Decision (ROD), a Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination. Selectees are encouraged to advance the project expeditiously with a goal of having the funds obligated within eighteen months of this announcement and no later than September 30, 2012, when these allocated funds will lapse. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TEAM application. Pre-award authority is granted as of July 8, 2010.

Post-award reporting requirements include submission of the Financial Federal Report and Milestone reports in TEAM as appropriate (see FTA.C.5010.1D). Recipients of exempt discretionary grants for urban circulators shall be required to submit information that describes the impact of the urban circulator on transit ridership and economic development after two years of operation.

Issued in Washington, DC, this 28th day of February, 2011.

Peter Rogoff,

Administrator.

TABLE I—URBAN CIRCULATOR PROJECT SELECTIONS

Project/sponsor	Project ID	Amount allocated
Chicago Central Area, Transitway: E–W Corridor BRT (Urban Circulator), Chicago Department of Transportation, Chicago Illinois.	D2010–URBC–06001	$24,650,000
St. Louis Loop Trolley Project (Urban Circulator), City of St. Louis, Missouri	D2010–URBC–07001	24,990,000
Charlotte Streetcar Starter Project (Urban Circulator), City of Charlotte, North Carolina	D2010–URBC–07002	24,990,000
Cincinnati Streetcar Project (Urban Circulator), City of Cincinnati, Ohio	D2010–URBC–07003	24,990,000
Olive/St. Paul Street Loop (Urban Circulator), Dallas Area Rapid Transit Authority (DART), Dallas Texas.	D2010–URBC–03001 ($2,458,956) D2010–URBC–05001 ($2,441,044)	4,900,000
Total		104,520,000

Appendix A

FTA REGIONAL AND METROPOLITAN OFFICES

Mary Beth Mello, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.
States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.
States served: New Jersey, New York
New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.
Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.
States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.
Philadelphia Metropolitan Office, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.
Washington, D.C. Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.
Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street, NW Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.
States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands.
Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.
States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.
Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.
States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.
Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.
States served: Iowa, Kansas, Missouri, and Nebraska.
Terry Rosapep, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.
States served: Colorado, Montana, North Dakota, South Dakota, Utah, and, Wyoming.
Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.
States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana, Islands.
Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.
Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.
States served: Alaska, Idaho, Oregon, and Washington.

[FR Doc. 2011–4873 Filed 3–3–11; 8:45 am]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011–0017]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–0284; or e-mail: *Rita.Jackson@dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0510.

Form Numbers: MA–935, MA–936, MA–937.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This information collection is essential for determining if a student or graduate of the United States Merchant Marine Academy (USMMA) or subsidized student or graduate of a State maritime academy has a waivable situation preventing them from fulfilling the requirements of a service obligation contract signed at the time of their enrollment in a Federal maritime training program. It also permits the Maritime Administration (MARAD) to determine if a graduate, who wishes to defer the service obligation to attend graduate school, is eligible to receive a deferment. Their service obligation is required by law.

Need and Use of the Information: This information collected establishes overall compliance with the service obligation contract in support of the Economic Growth and Trade and National Security goals identified in the DOT Strategic Plan. Because the graduates are required to serve as commissioned officers in the U.S. Merchant Marine Reserve, U.S. Naval Reserve (as an aspect of the service obligation), they become the Navy's single largest source of naval reserve officers except for Naval R.O.T.C. In their civilian capacities, they are required first to sail on their professional merchant marine licenses or work in the maritime industry ashore. This dual role makes the graduates especially valuable because national defense planning initiatives and the Nation's economic needs depend on available personnel who are highly trained.

Description of Respondents: U.S. Merchant Marine Academy students and graduates, and subsidized students and graduates who attend the State Maritime Academies.

Annual Responses: 11.

Annual Burden: 3.30 hours.

Comments: Comments should be referred to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets,

Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator. Dated: February 14, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–4939 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Jaguar Land Rover

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Jaguar Land Rover North America's, (Land Rover) petition for an exemption of the Range Rover Evoque vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with the 2012 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–439, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated November 22, 2010, Land Rover requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Range Rover Evoque vehicle line beginning with MY 2012. The petition has been filed pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Land Rover provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Range Rover Evoque vehicle line. Land Rover stated that the Range Rover Evoque vehicles will be equipped with a passive, transponder based, electronic engine immobilizer antitheft device as standard equipment beginning with the 2012 model year. Key components of its antitheft device will include a power train module, instrument cluster, body control module, remote frequency receive immobilizer antenna unit, smart key, door control units and a perimeter alarm system. The immobilizer device is automatically immobilized when the Smart Key is removed from the vehicle. Land Rover stated that the Smart Key is programmed and synchronized to the vehicle by means of a unique identification code key and a secret code key which is randomly generated and unique to each vehicle. Additionally, Land Rover states that its antitheft device will include an audible and visual perimeter alarm system as standard equipment that can be armed manually or programmed to arm automatically with the Smart Key. If the hood, luggage compartment, or doors are opened during an unauthorized entry, the vehicle siren alarm will sound and the exterior lights will flash.

Land Rover stated that there are three methods of vehicle operation and engine start: (1) Pulling the driver's door handle with correct Smart Key authentication, and pressing the ignition start button; (2) unlocking the vehicle with the Smart Key unlock button; and (3) using the emergency key blade.

In addressing the specific content requirements of 543.6, Land Rover provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Land Rover conducted tests based on its own specified standards. Land Rover provided a detailed list of the tests conducted (*i.e.,* temperature and humidity cycling, high and low temperature cycling, mechanical shock, random vibration, thermal stress/shock tests, material resistance tests, dry heat, dust and fluid ingress tests). Land Rover stated that it believes that its device is reliable and durable because it complied with specified requirements for each test. Additionally, Land Rover stated that the vehicle's key recognition sequence includes in excess of a billion code combinations with encrypted data that is secure against copying. The coded data transfer between modules also use a unique secure identifier, random number and secure public algorithm.

Land Rover stated that since the Range Rover Evoque is a new vehicle line, there is no data from a previous generation vehicle to compare theft rate data, although, it stated, the immobilizer in the Range Rover Evoque is substantially similar to the antitheft device installed on the MY 2010 Jaguar XJ vehicle line that was previously granted an exemption by the agency on November 16, 2009. Land Rover stated that based on 2006–2008 MY theft data information published by NHTSA, Land Rover vehicles equipped with immobilizers had theft rates that were below the median. Land Rover also stated that the immobilizer in the Range Rover Evoque line is no less effective than devices NHTSA has already granted full exemptions (*i.e.,* Jaguar XK and XJ). Additionally, Land Rover submitted a Highway Loss Data Institute news release (July 19, 2000) showing an approximate 50% reduction in theft for vehicles installed with an immobilizer device.

Based on the evidence submitted by Land Rover, the agency believes that the antitheft device for the Range Rover Evoque vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with

the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Land Rover has provided adequate reasons for its belief that the antitheft device for the Range Rover Evoque vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Land Rover provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Land Rover's petition for exemption for the Range Rover Evoque vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the anti-theft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Land Rover decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Land Rover wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 1, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–4952 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Toyota

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Toyota Motor North America, Inc's., (Toyota) petition for an exemption of the Corolla vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, W43–443, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated January 24, 2011, Toyota requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Toyota Corolla vehicle line beginning with MY 2012. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Toyota provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Corolla vehicle line. Toyota will install a passive, transponder-based, electronic engine immobilizer device as standard equipment on its Corolla vehicle line beginning with MY 2012.

Key components of the antitheft device include an engine immobilizer, transponder key electronic control unit (ECE), assembly, transponder key amplifier, security indicator, ignition key and Electronic control module (ECM). The device's security indicators provide the status of the immobilizer to users and others inside/outside the vehicle. When the immobilizer is activated, the indicator flashes continuously. When the immobilizer is not activated, the indicator is turned off. The antitheft device does not incorporate an audible or visual alarm as standard equipment. Toyota's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

Toyota stated that the immobilizer is activated when the ignition key is turned from the "ON" position and/or removed from the vehicle's ignition. The device is deactivated when the "conventional key" is inserted into the key cylinder and turned toward the "ON" position. Toyota stated that after the key is inserted into the key cylinder, the transponder chip in the key sends

the ID codes to the Transponder Key ECU assembly to verify the code. When the key code has been verified, the immobilizer allows the ECM to start the engine.

Toyota also stated that there will be position switches installed in the vehicle to protect the hood and doors. The sensors will trigger the antitheft device when it detects inappropriate opening of the hood (*i.e.,* from outside the vehicle, instead of using the interior release) and inappropriate opening of the door (*i.e.,* when the doors are opened without using a key or wireless switch/key FOB).

In addressing the specific content requirements of 543.6, Toyota provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Toyota conducted tests based on its own specified standards. Toyota provided a detailed list of the tests conducted (*i.e.,* high and low temperature, strength, impact, vibration, electro-magnetic interference, etc.). Toyota stated that it believes that its device is reliable and durable because it complied with its own specific design standards and it is installed in other vehicle lines for which the agency has granted a parts-marking exemption. Additionally, Toyota stated that there are approximately 20,000 combinations for the key cylinders and key plates for its outer gutter keys and approximately 10,000 for its inner gutter keys, making it very difficult to unlock the doors without valid keys.

Toyota informed the agency that its Corolla vehicle line has been equipped with the device beginning with its MY 2005 vehicles. Toyota referenced NHTSA published theft rate data for several years before and after the Corolla vehicle line was equipped with a standard immobilizer. Toyota stated that the average theft rate for the Corolla dropped to 2.1 per 1,000 cars produced between MYs 2005–2008 (with a standard immobilizer) from 4.0 per 1,000 cars produced between MYs 1996–1999 (without a standard immobilizer). Toyota stated that this represents approximately a 47.5% decrease in the theft rate with installation of a standard immobilizer for the Toyota Corolla vehicle line when compared to the average for the Corolla when it was parts marked. Toyota believes that installing the immobilizer as standard equipment reduces the theft rate and therefore would be more effective than parts-marking labels. Toyota also revealed that the Toyota Camry and Lexus LS and GS vehicle lines have all been granted parts-marking exemptions by the agency. The theft rates for the Toyota Camry and Lexus LS and GS vehicle lines using an average of three model years data are 1.6742, 1.3567 and 1.0961 respectively. Therefore, Toyota has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Toyota, the agency believes that the antitheft device for the Corolla vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Toyota has provided adequate reasons for its belief that the antitheft device for the Toyota Corolla vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Toyota provided about its device.

The agency concludes that the device will provide four or five of the types of performance listed in § 543.6(a)(3): Promoting activation; attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device

For the foregoing reasons, the agency hereby grants in full Toyota's petition for exemption for the Toyota Corolla vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2012 model year vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Toyota decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Toyota wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 1, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–4951 Filed 3–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 303 (Sub-No. 37X)]

Wisconsin Central, Ltd.—Abandonment Exemption—in Marathon County, WI

Wisconsin Central, Ltd. (WCL), filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt*

Abandonments to abandon 1.14 miles of rail line between mileposts 17.50 and 18.64, in Weston, Marathon County, Wis.[1] The line traverses United States Postal Service Zip Code 54474.

WCL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 5, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 14, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 24, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative: Thomas J. Healey, 17641 S. Ashland Ave., Homewood, IL 60430.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WCL has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by March 11, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1 800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by March 4, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 28, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–4844 Filed 3–3–11; 8:45 am]

BILLING CODE 4915–01–P

[1] WCL is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35464]

Watco Holdings, Inc.—Continuance in Control Exemption—Autauga Northern Railroad, L.L.C.

Watco Holdings, Inc. (Watco), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Autauga Northern Railroad, L.L.C. (ANRR), upon ANRR's becoming a Class III rail carrier.[1]

This transaction is related to a concurrently filed notice of exemption in Docket No. FD 35465, *Autauga Northern Railroad, L.L.C.—Lease and Operation Exemption—Norfolk Southern Railway Company.* In that proceeding, ANRR seeks an exemption under 49 CFR 1150.31 to acquire by lease from Norfolk Southern Railway Company (NSR) and to operate approximately 43.62 miles of rail lines, located between: (1) Milepost MA 130.00, at Maplesville, Ala., and milepost MA 171.05, at Autauga Creek, Ala.; and (2) milepost MD 0.00 and milepost MD 2.57, at Autauga Creek. ANRR will also acquire from NSR approximately 10.08 miles of incidental trackage rights over a rail line owned by CSX Transportation, Inc., extending between milepost 171.02, at Autauga Creek, and milepost 181.1, at Montgomery, Ala.

The parties intend to consummate the transaction on or shortly after March 19, 2011 (the effective date of this notice).

Watco currently controls 22 Class III rail carriers: South Kansas and Oklahoma Railroad Company, Inc.; Palouse River & Coulee City Railroad, L.L.C.; Timber Rock Railroad, L.L.C.; Stillwater Central Railroad, L.L.C.; Eastern Idaho Railroad, L.L.C.; Kansas & Oklahoma Railroad, L.L.C.; Pennsylvania Southwestern Railroad, L.L.C.; Great Northwest Railroad, L.L.C.; Kaw River Railroad, L.L.C.; Mission Mountain Railroad, L.L.C.; Mississippi Southern Railroad, L.L.C.; Yellowstone Valley Railroad, L.L.C.; Louisiana Southern Railroad, L.L.C.; Arkansas Southern Railroad, L.L.C.; Alabama Southern Railroad, L.L.C.; Vicksburg Southern Railroad, L.L.C.; Austin Western Railroad, L.L.C.; Baton Rouge Southern Railroad, L.L.C.; Pacific Sun Railroad L.L.C.; Grand Elk Railroad, Inc.; Alabama Warrior Railway, L.L.C.; and Boise Valley Railroad, L.L.C.

Watco represents that: (1) The rail lines to be operated by ANRR do not connect with any other railroads in the Watco corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and

[1] Watco indirectly owns 100% of the issued and outstanding stock of ANRR.

11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 11, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35464, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 28, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–4871 Filed 3–3–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35465]

Autauga Northern Railroad, L.L.C.—Lease and Operation Exemption—Norfolk Southern Railway Company

Autauga Northern Railroad, L.L.C. (ANRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Norfolk Southern Railway Company (NSR), and operate approximately 43.62 miles of rail lines, located between: (1) Milepost MA 130.00, at Maplesville, Ala., and milepost MA 171.05, at Autauga Creek, Ala.; and (2) milepost MD 0.00 and milepost MD 2.57, at Autauga Creek. In addition, ANRR will obtain by assignment incidental trackage rights over a 10.08-mile rail line owned by CSX Transportation, Inc., extending between milepost 171.02, at Autauga Creek, and milepost 181.1, at Montgomery, Ala.

This transaction is related to a concurrently filed notice of exemption in Docket No. FD 35464, *Watco Holdings, Inc.—Continuance in Control Exemption— Autauga Northern Railroad, L.L.C.,* in which Watco Holdings, Inc., a noncarrier, seeks Board approval to continue in control of ANRR upon Board approval of this transaction.

The transaction may not be consummated until March 19, 2011, the effective date of the exemption (30 days after the exemption was filed).

ANRR certifies that, as a result of this transaction, its projected revenues will not result in ANRR becoming a Class II or Class I rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by no later than March 11, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35465, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 28, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–4848 Filed 3–3–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8609 and 8609–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8609 and 8609–A, Low-Income Housing Credit Allocation and Certification

DATES: Written comments should be received on or before May 3, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph M. Terry, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–8144, or through the Internet at *Ralph.M.Terry@IRS.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Allocation and Certification.

OMB Number: 1545–0988.

Form Number: Form 8609 and 8609–A.

Abstract: Owners of residential low-income rental buildings are allowed a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 can be used to obtain a housing credit allocation from the housing credit agency. A separate Form 8609 must be issued for each building in a multiple building project. Form 8609 is also used to certify certain information. Form 8609–A is filed by a building owner to report compliance with the low-income housing provisions and calculate the low-income housing credit. Form 8609–A must be filed by the building owner for each year of the 15-year compliance period. File one Form 8609–A for the allocation(s) for the acquisition of an existing building and a separate Form 8609–A for the allocation(s) for rehabilitation expenditures.

Current Actions: 8609 Instructions were updated in December of 2010 and due to updated filing figures in computing the burden has changed.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 359,046.

Estimated Time per Respondent: 31 hrs. 01 min.

Estimated Total Annual Burden Hours: 4,090,332.

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: February 25, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–4847 Filed 3–3–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Authority To Conduct Research and Development on All Circulating Coins

AGENCY: United States Mint, Treasury.

ACTION: Notice with request for comment.

SUMMARY: Congress recently enacted the Coin Modernization, Oversight, and Continuity Act of 2010 (Pub. L. 111–302) to provide the Secretary of the Treasury research and development authority for alternative metallic coinage materials. Specifically, the Secretary of the Treasury is authorized to—(1) conduct any appropriate testing of appropriate metallic coinage materials within or outside of the Department of the Treasury; and (2) solicit input from or otherwise work in conjunction with Federal and nonfederal entities, including independent research facilities or current or potential suppliers of the metallic material used in volume production of circulating coins. In accordance with Public Law 111–302, Section 2(b), in conducting research or soliciting input, the Secretary of the Treasury shall consider the following:

(A) Factors relevant to the potential impact of any revisions to the composition of the material used in coin production on the current coinage material suppliers;

(B) factors relevant to the ease of use and ability to co-circulate of new coinage materials, including the effect on vending machines and commercial coin processing equipment and making certain, to the greatest extent practicable, that any new coins work without interruption in existing coin acceptance equipment without modification; and

(C) such other factors that the Secretary of the Treasury, in consultation with merchants who would be affected by any change in the composition of circulating coins, vending machine and other coin acceptor manufacturers, vending machine owners and operators, transit officials, municipal parking officials, depository institutions, coin and currency handlers, armored-car operators, car wash operators, and American-owned manufacturers of commercial coin processing equipment, considers to be appropriate and in the public interest.

Additionally, the Secretary of the Treasury is required to report biennially to the House Financial Services Committee and the Senate Committee on Banking, Housing, and Urban Affairs on the production costs for each circulating coin, cost trends for such production, and possible new metallic materials or technologies for the production of circulating coins.

The Secretary of the Treasury has delegated to the Director of the United States Mint the authority to conduct research and development for alternative metallic coinage materials, to consider the factors specified in Public Law 111–302, Section 2(b), and to prepare a biennial report to the Congress on the current status of coin production costs and analysis of alternative metallic coinage materials.

Accordingly, the United States Mint requests public comment on the factors specified in Public Law 111–302, Section 2(b).

DATES: Comments must be submitted on or before April 4, 2011.

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: coinmaterials@usmint.treas.gov*
- *Fax:* (202) 756–6500
- *Mail:* New Coin Materials Comments, Mail Stop: Manufacturing 6 North, United States Mint, 801 Ninth Street, NW., Washington, DC 20220.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Jean Gentry, Deputy Chief Counsel, United States Mint at (202) 354–7359 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

Because of prevailing commodity market prices of certain base metals, the material costs for all circulating coin denominations have risen dramatically for the past several years. Most recently, the value of the metal content of one-cent and 5-cent coins has exceeded their face value, compelling the United States Mint to implement regulations to protect them from arbitrage—speculators buying large quantities of these coins to profit from their metal value. This situation prompted Congress to pass legislation to give the Secretary of the Treasury research and development authority to conduct studies for alternative metallic coinage materials. The new law requires the Secretary of the Treasury to consider certain factors in the conduct of research, development, and the solicitation of input or work in conjunction with Federal and nonfederal entities, and in reporting to the Congress with recommendations.

The Secretary of the Treasury has delegated to the Director of the United States Mint the authority to consider these factors and to prepare a report to the Congress recommending possible new metallic materials or technologies for the production of circulating coins. Accordingly, the United States Mint seeks information from the public on the factors specified in Public Law 111–302, Section 2(b), including factors that submitters believe the Secretary of the Treasury should consider to be appropriate and in the public interest.

II. Request for Comment

The United States Mint requests public comment from all interested persons regarding the metallic composition of all circulating coins based on the factors specified in Public Law 111–302, Section 2(b). These factors may include, but are not limited to, the effect of new coinage metallic materials on the current suppliers of coinage materials; the acceptability of new coinage metallic materials, including physical, chemical, metallurgical and technical characteristics; metallic material,

fabrication, minting, and distribution costs; metallic material availability and sources of raw metals; coinability; durability; sorting, handling, packaging and vending machines; appearance; risks to the environment or public safety; resistance to counterfeiting; commercial and public acceptance; and any other factor considered to be appropriate and in the public interest.

The United States Mint is not soliciting suggestions or recommendations on specific metallic coinage materials, and any such suggestions or recommendations will not be considered at this time. The United States Mint seeks public comment only on the factors to be considered in the research and evaluation of potential new metallic coinage materials.

Dated: February 28, 2011.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–4880 Filed 3–3–11; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

Vol. 76 Friday,
No. 43 March 4, 2011

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202 (These are not toll-free numbers).

Dated: February 24, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/04/2011

Suitable/Available Properties

Building

Alabama

Bldgs. 4704 & 4707
Andrews Ave Motorpool
Fort Rucker AL 36362
Landholding Agency: Army
Property Number: 21201110019
Status: Unutilized
Comments: Off-site removal only, bldg 4704—2600 sq. ft. and bldg. 4707—120 sq. ft., current use: vechile maint. shop for bldg. 4704 and dispatch—bldg 4707, fair conditions; need repairs

Alaska

Bldg. 00001
Kiana Natl Guard Armory
Kiana AK 99749
Landholding Agency: Army
Property Number: 21200340075
Status: Excess
GSA Number:
Comments: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001
Holy Cross Armory
High Cross AK 99602
Landholding Agency: Army
Property Number: 21200710051
Status: Excess
Comments: 1200 sq. ft. armory, off-site use only

Bldg. 136
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820147
Status: Excess
Comments: 2383 sq. ft., most recent use—housing, off-site use only

Arizona

Bldg. S–306
Yuma Proving Ground
Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Directions:
Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground null
Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Directions:
Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only

Bldg. 43002
Fort Huachuca
Cochise AZ 85613–7010

Landholding Agency: Army
Property Number: 21200440066
Status: Excess
Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

Bldg. 90551
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200920001
Status: Excess
Comments: 1270 sq. ft., most recent use—office, off-site use only

California

Bldgs. 18026, 18028
Camp Roberts
Monterey CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
GSA Number:
Comments: 2024 sq. ft. sq. ft., concrete, poor condition, off-site use only

Bldg. 00052
Moffett Community Housing
Vernon Ave.
Santa Clara CA 94035
Landholding Agency: Army
Property Number: 21200930002
Status: Unutilized
Comments: 4530 sq ft., most recent use—mini mart/meeting rooms, off-site use only

Colorado

Bldg. 00127
Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21200420179
Status: Unutilized
Comments: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 01516
Fort Carson
El Paso CO 80913
Landholding Agency: Army
Property Number: 21200640116
Status: Unutilized
Comments: 723 sq. ft., needs repair, most recent use—storage, off-site use only

Georgia

Bldg. 322
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Directions:
Comments: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2593
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Directions:
Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Directions:
Comments: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldg. 4232
Fort Benning
GA 31905
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Directions:
Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldgs. 5974–5978
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
GSA Number:
Comments: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
GSA Number:
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. T–1003
Fort Stewart
Hinesville GA 31514
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
GSA Number:
Comments: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. T0130
Fort Stewart
Hinesville GA 31314–5136
Landholding Agency: Army
Property Number: 21200230041
Status: Excess
GSA Number:
Comments: 10,813 sq. ft., off-site use only

Bldg. T0157
Fort Stewart
Hinesville GA 31314–5136
Landholding Agency: Army
Property Number: 21200230042
Status: Excess
GSA Number:
Comments: 1440 sq. ft., off-site use only

Bldgs. T291, T292
Fort Stewart
Hinesville GA 31314–5136
Landholding Agency: Army
Property Number: 21200230044
Status: Excess
GSA Number:
Comments: 5220 sq. ft. each, off-site use only

Bldg. T0295
Fort Stewart
Hinesville GA 31314–5136
Landholding Agency: Army
Property Number: 21200230045
Status: Excess
GSA Number:
Comments: 5220 sq. ft., off-site use only

Bldg. 4476
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200420034
Status: Excess
Comments: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only

Bldg. 9029
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200420050
Status: Excess
Comments: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. T924
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420194
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 00924
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200510065
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 08585
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200530078
Status: Excess
Comments: 165 sq. ft., most recent use—plant, off-site use only

Bldg. 01150
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200610037
Status: Excess
Comments: 137 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01151
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200610038
Status: Excess
Comments: 78 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01153
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200610039
Status: Excess
Comments: 211 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01530
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610048
Status: Excess
Comments: 80 sq. ft., most recent use—scale house, off-site use only

Bldg. 08032
Fort Stewart

Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610051
Status: Excess
Comments: 2592 sq. ft., needs rehab, most recent use—storage/stable, off-site use only

Bldg. 07783
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200640093
Status: Excess
Comments: 8640 sq. ft., most recent use—maintenance hangar, off-site use only

Bldg. 08061
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200640094
Status: Excess
Comments: 1296 sq. ft., most recent use—weather station, off-site use only

Bldg. 00100
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740052
Status: Excess
Comments: 10893 sq. ft., most recent use—battalion hdqts., off-site use only

Bldg. 00129
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740053
Status: Excess
Comments: 4815 sq. ft., presence of asbestos, most recent use—religious education facility, off-site use only

Bldg. 00145
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740054
Status: Excess
Comments: 11590 sq. ft., presence of asbestos, most recent use—post chapel, off-site use only

Bldg. 00811
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740055
Status: Excess
Comments: 42853 sq. ft., most recent use—co hq bldg, off-site use only

Bldg. 00812
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740056
Status: Excess
Comments: 1080 sq. ft., most recent use—power plant, off-site use only

Bldg. 00850
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740057
Status: Excess
Comments: 108,287 sq. ft., presence of asbestos, most recent use—aircraft hangar, off-site use only

Bldg. 00860
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740058
Status: Excess
Comments: 10679 sq. ft., presence of asbestos, most recent use—maint. hangar, off-site use only

Bldg. 01028
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740059
Status: Excess
Comments: 870 sq ft., most recent use—storage, off-site use only

Bldg. 00955
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740060
Status: Excess
Comments: 120 sq. ft., most recent use—storage, off-site use only

Bldg. 00957
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740061
Status: Excess
Comments: 6072 sq. ft., most recent use—recycling facility, off-site use only

Bldg. 00971
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740062
Status: Excess
Comments: 4000 sq. ft., most recent use—vehicle maint., off-site use only

Bldg. 01015
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740063
Status: Excess
Comments: 7496 sq. ft., most recent use—storage, off-site use only

Bldg. 01209
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740064
Status: Excess
Comments: 4786 sq. ft., presence of asbestos, most recent use—vehicle maint., off-site use only

Bldg. 07335
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740065
Status: Excess
Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 245
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740178
Status: Unutilized
Comments: 1102 sq. ft., most recent use—fld ops, off-site use only

Bldg. 2748
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740180
Status: Unutilized
Comments: 3990 sq. ft., most recent use—office, off-site use only

Bldg. 3866
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740182
Status: Unutilized
Comments: 944 sq. ft., most recent use—office, off-site use only

Bldg. 8682
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740183
Status: Unutilized
Comments: 780 sq. ft., most recent use—admin., off-site use only

Bldg. 10800
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740184
Status: Unutilized
Comments: 16,628 sq. ft., off-site use only

Bldgs. 11302, 11303, 11304
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740185
Status: Unutilized
Comments: various sq. ft., most recent use—ACS center, off-site use only

Bldg. 0297
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810045
Status: Excess
Comments: 4839 sq. ft., most recent use—riding stable, off-site use only

Bldg. 3819
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810046
Status: Excess
Comments: 4241 sq. ft., most recent use—training, off-site use only

Bldg. 10802
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810047
Status: Excess
Comments: 3182 sq. ft., most recent use—storage, off-site use only

Bldg. 00926
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200840061
Status: Excess
Comments: 1752 sq. ft., most recent use—BN, HQ bldg., off-site use only

Bldg. 01021
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army

Property Number: 21200840062
Status: Excess
Comments: 6855 sq. ft., most recent use—admin., presence of asbestos, off-site use only

Bldg. 07335
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840063
Status: Excess
Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 07778
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840064
Status: Excess
Comments: 1189 sq. ft., most recent use—admin., off-site use only

7 Bldgs.
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840065
Status: Excess
Directions: 12601, 12602, 12603, 12605, 12606, 12607, 12609
Comments: 2953 sq. ft. each, presence of asbestos, most recent use—barracks, off-site use only

9 Bldgs.
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840066
Status: Excess
Directions: 12610, 12611, 12612, 12613, 12614, 12615, 12616, 12617, 12618
Comments: 2953 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12619
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840067
Status: Excess
Comments: 3099 sq. ft. presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12682
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840068
Status: Excess
Comments: 120 sq. ft., presence of asbestos, most recent use—fuel/POL bldg., off-site use only

6 Bldgs.
Fort Benning
Fort Benning GA 31905
Landholding Agency: Army
Property Number: 21201110038
Status: Underutilized
Directions: Bldgs: 02452, 02680, 02864, 02865, 02866, 02867
Comments: Off-site removal only; sq. ft. varies; current use varies; all bldgs. in poor condition—need repairs

7 Bldgs.
Ft. Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21201110051
Status: Underutilized
Directions: 02868, 02867, 02870, 02871, 02872, 02873, 02875
Comments: Off-site removal only, multiple bldgs. w/varied sq. ft., current use varies from ea. bldg., bldgs. in poor condition—need repairs

Hawaii

P–88
Aliamanu Military Reservation
Honolulu HI 96818
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Directions: Approximately 600 feet from Main Gate on Aliamanu Drive.
Comments: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Illinois

Bldg. AR112
Sheridan Reserve
Arlington Heights IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
GSA Number:
Comments: 1000 sq. ft., off-site use only

Bldgs. 634, 639
Fort Sheridan
Ft. Sheridan IL 60037
Landholding Agency: Army
Property Number: 21200740186
Status: Unutilized
Comments: 3731/3706 sq. ft., most recent use—classroom/storage, off-site use only

Iowa

Bldg. 00691
Iowa Army Ammo Plant
Middletown IA 52638
Landholding Agency: Army
Property Number: 21200510073
Status: Unutilized
Comments: 2581 sq. ft. residence, presence of lead paint, possible asbestos

Bldg. 00691
Iowa Army Ammo Plant
Middletown IA 52638
Landholding Agency: Army
Property Number: 21200520113
Status: Unutilized
Comments: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential

Kansas

10 Bldgs.
9081 Vinton School Rd.
Fort Riley KS 66442
Landholding Agency: Army
Property Number: 21201110009
Status: Unutilized
Directions: 09081, 00179, 09004, 09016, 09074, 09008, 09383, 09384, 09386, 09451
Comments: Off-site removal only; multiple bldgs w/various sq. footage (80–660 sq. ft.) very poor condition, needs major repairs; current use varies

Ft. Riley U.S. Army Reservation
9377 6800 N RD
Fort Riley KS 66442
Landholding Agency: Army
Property Number: 21201110010
Status: Unutilized
Directions: 10 bldgs: 09377, 09302, 09082, 09083, 09084, 09385, 07033, 07034, 07036, 09015
Comments: Off-site removal only; multiple bldgs. w/various sq. footage (610–10,010 sq. ft.), Current use varies office to range operation support, very poor conditions—need major repairs

5 Bldgs.
Fort Riley
Fort Riley KS 66442
Landholding Agency: Army
Property Number: 21201110016
Status: Unutilized
Directions: Bldgs: 09451, 08369, 07123, 1990, 07816
Comments: Off-site removal only, sq. footage varies w. each bldg; current use varies (gas chamber—storage), some bldgs., need repairs

5 Bldgs.
Fort Riley
Fort Riley KS 66442
Landholding Agency: Army
Property Number: 21201110017
Status: Unutilized
Directions: Bldgs: 01781, 07818, 08324, 07739, 8329
Comments: Off-site removal only, sq. ft. varies for each bldg., current use varies (oil storage bldg.—training ctr.), repairs needed for buildings

5 Bldgs.
Fort Riley
Fort Riley KS 66442
Landholding Agency: Army
Property Number: 21201110018
Status: Unutilized
Directions: Bldgs: 01780, 09383, 08322, 08320, 08328
Comments: Off-site removal only, sq. ft. varies, current use varies (training ctr.—dispatch bldg.), poor conditions; need repairs for all

Kentucky

Fort Knox
Eisenhower Avenue
Fort Knox KY 40121
Landholding Agency: Army
Property Number: 21201110011
Status: Unutilized
Directions: Bldgs: 06559, 06571, 06575, 06583, 06584, 06585, 06586
Comments: Off-site removal only; multiple bldgs. w/various sq. footage (2,578–8,440 sq. ft), current use varies (classroom—dental clinic), lead base paint, asbestos & mold identified

Fort Knox, 10 Bldgs.
Bacher Street
2nd Dragoons Rd & Abel St
Fort Knox KY 40121
Landholding Agency: Army
Property Number: 21201110012
Status: Unutilized
Directions: Bldgs: 06547, 06548, 06549, 06550, 06551, 06552, 06553, 06554, 06557, 06558
Comments: Off-site removal only, multiple bldgs. w/various sq. footage (8,527–41,631 sq. ft.) lead base paint, asbestos & mold identified in all bldgs. Current use varies

Fort Knox, 10 Bldgs.

Eisenhower Ave
Fort Knox KY 40121
Landholding Agency: Army
Property Number: 21201110015
Status: Unutilized
Directions: Bldgs: 06535, 06536, 06537, 06539, 06540, 06541, 06542, 06544, 06545, 06546
Comments: Off-site removal only, multiple bldgs. w/various sq. ft. (2,510—78,436 sq. ft.) lead base paint, asbestos & mold has been identified in all bldgs. Current use varies

Louisiana

Bldg. 8423, Fort Polk
null
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Directions:
Comments: 4172 sq. ft., most recent use—barracks

Bldg. T7125
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540088
Status: Unutilized
Comments: 1875 sq. ft., off-site use only

Bldgs. T7163, T8043
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540089
Status: Unutilized
Comments: 4073/1923 sq. ft., off-site use only

Maryland

Bldg. 0459B
Aberdeen Proving Ground
Aberdeen MD 21005–5001
Landholding Agency: Army
Property Number: 21200120106
Status: Unutilized
GSA Number:
Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Aberdeen Proving Ground
Aberdeen MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107
Status: Unutilized
GSA Number:
Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E5239
Aberdeen Proving Ground
Aberdeen MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
GSA Number:
Comments: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Aberdeen Proving Ground
Aberdeen MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
GSA Number:
Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Aberdeen Proving Ground
Aberdeen MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
GSA Number:
Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
GSA Number:
Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized
GSA Number:
Comments: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only

Bldg. 1007
Ft. George G. Meade
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
GSA Number:
Comments: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade MD 20755
Landholding Agency: Army
Property Number: 21200230054
Status: Unutilized
GSA Number:
Comments: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 00375
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320107
Status: Unutilized
GSA Number:
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 0385A
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320110
Status: Unutilized
GSA Number:
Comments: 944 sq. ft., off-site use only

Bldg. 00523
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320113
Status: Unutilized
GSA Number:
Comments: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 0700B
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320121
Status: Unutilized
GSA Number:
Comments: 505 sq. ft., off-site use only

Bldg. 01113
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320128
Status: Unutilized
GSA Number:
Comments: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320129
Status: Unutilized
GSA Number:
Comments: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldg. 03558
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320133
Status: Unutilized
GSA Number:
Comments: 18,000 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320136
Status: Unutilized
GSA Number:
Comments: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320137
Status: Unutilized
GSA Number:
Comments: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E5645
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200320150
Status: Unutilized
GSA Number:
Comments: 548 sq. ft., most recent use—storage, off-site use only

Bldg. 00435
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330111
Status: Unutilized
GSA Number:
Comments: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330112
Status: Unutilized
GSA Number:
Comments: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldg. 0460
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330114
Status: Unutilized
GSA Number:
Comments: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldg. 00914
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330118
Status: Unutilized
GSA Number:
Comments: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330119
Status: Unutilized
GSA Number:
Comments: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 01189
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330126
Status: Unutilized
GSA Number:
Comments: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330127
Status: Unutilized
GSA Number:
Comments: needs rehab, most recent use—observation tower, off-site use only

Bldg. E3175
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330134
Status: Unutilized
GSA Number:
Comments: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330135
Status: Unutilized
GSA Number:
Directions: E3224, E3228, E3230, E3232, E3234
Comments: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330136
Status: Unutilized
GSA Number:
Comments: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Bldg. E3300
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330139
Status: Unutilized
GSA Number:
Comments: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3335
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330144
Status: Unutilized
GSA Number:
Comments: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330145
Status: Unutilized
GSA Number:
Comments: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3542
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330148
Status: Unutilized
GSA Number:
Comments: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E4420
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330151
Status: Unutilized
GSA Number:
Comments: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330154
Status: Unutilized
GSA Number:
Directions: E5005, E5049, E5050, E5051
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330155
Status: Unutilized
GSA Number:
Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldgs. 05448, 05449
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330161
Status: Unutilized
GSA Number:
Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330162
Status: Unutilized
GSA Number:
Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330163
Status: Unutilized
GSA Number:
Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330164
Status: Unutilized
GSA Number:
Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E5609
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330167
Status: Unutilized
GSA Number:
Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330168
Status: Unutilized
GSA Number:
Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330169
Status: Unutilized
GSA Number:
Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5654
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330171
Status: Unutilized
GSA Number:
Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330176
Status: Unutilized
GSA Number:
Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330177
Status: Unutilized
GSA Number:
Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330178
Status: Unutilized
GSA Number:
Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200330179
Status: Unutilized
GSA Number:
Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. 3070A
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420055
Status: Unutilized
Comments: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420056
Status: Unutilized
Comments: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420057
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5876
Aberdeen Proving Grounds
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200440073
Status: Unutilized
Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00688
Aberdeen Proving Ground
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200530080
Status: Unutilized
Comments: 24,192 sq. ft., most recent use—ammo, off-site use only

Bldg. 04925
Aberdeen Proving Ground
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21200540091
Status: Unutilized
Comments: 1326 sq. ft., off-site use only

Bldg. 00255
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720052
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00638
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720053
Status: Unutilized
Comments: 4295 sq. ft., most recent use—storage, off-site use only

Bldg. 00721
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200720054
Status: Unutilized
Comments: 135 sq. ft., most recent use—storage, off-site use only

Bldgs. 00936, 00937
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720055
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldgs. E1410, E1434
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720056
Status: Unutilized
Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only

Bldg. 03240
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720057
Status: Unutilized
Comments: 10,049 sq. ft., most recent use—office, off-site use only

Bldg. E3834
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720058
Status: Unutilized
Comments: 72 sq. ft., most recent use—office, off-site use only

Bldgs. E4465, E4470, E4480
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720059
Status: Unutilized
Comments: 17658/16876/17655 sq. ft., most recent use—office, off-site use only

Bldgs. E5137, 05219
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720060
Status: Unutilized
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only

Bldg. E5236
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720061
Status: Unutilized
Comments: 10,325 sq. ft., most recent use—storage, off-site use only

Bldg. E5282
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720062
Status: Unutilized
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. E5736, E5846, E5926
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720063
Status: Unutilized
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only

Bldg. E6890
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720064
Status: Unutilized
Comments: 1 sq. ft., most recent use—impact area, off-site use only

Bldg. 00310
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200820077
Status: Unutilized
Comments: 56516 sq. ft., most recent use—admin., off-site use only

Bldg. 00315
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820078
Status: Unutilized
Comments: 74396 sq. ft., most recent use—mach shop, off-site use only

Bldg. 00338
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820079
Status: Unutilized
Comments: 45443 sq. ft., most recent use—gnd tran eqp, off-site use only

Bldg. 00360
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820080
Status: Unutilized
Comments: 15287 sq. ft., most recent use—general inst., off-site use only

Bldg. 00445
Aberdeen Proving Ground

Harford MD
Landholding Agency: Army
Property Number: 21200820081
Status: Unutilized
Comments: 6367 sq. ft., most recent use—lab, off-site use only

Bldg. 00851
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820082
Status: Unutilized
Comments: 694 sq. ft., most recent use—range bldg., off-site use only

E1043
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820083
Status: Unutilized
Comments: 5200 sq. ft., most recent use—lab, off-site use only

Bldg. 01089
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820084
Status: Unutilized
Comments: 12369 sq. ft., most recent use—veh maint, off-site use only

Bldg. 01091
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820085
Status: Unutilized
Comments: 2201 sq. ft., most recent use—storage, off-site use only

Bldg. E1386
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820086
Status: Unutilized
Comments: 251 sq. ft., most recent use—eng/mnt, off-site use only

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820087
Status: Unutilized
Directions:
E1440, E1441, E1443, E1445, E1455
Comments: 112 sq. ft., most recent use—safety shelter, off-site use only

Bldgs. E1467, E1485
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820088
Status: Unutilized
Comments: 160/800 sq. ft., most recent use—storage, off-site use only

Bldg. E1521
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820090
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. E1570
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820091
Status: Unutilized
Comments: 47027 sq. ft., most recent use—office, off-site use only

Bldg. E1572
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820092
Status: Unutilized
Comments: 1402 sq. ft., most recent use—maint., off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820093
Status: Unutilized
Directions:
E1645, E1675, E1677, E1930
Comments: various sq. ft., most recent use—office, off-site use only

Bldgs. E2160, E2184, E2196
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820094
Status: Unutilized
Comments: 12440/13816 sq. ft., most recent use—storage, off-site use only

Bldg. E2174
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820095
Status: Unutilized
Comments: 132 sq. ft., off-site use only

Bldgs. 02208, 02209
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820096
Status: Unutilized
Comments:11566/18085 sq. ft., most recent use—lodging, off-site use only

Bldg. 02353
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820097
Status: Unutilized
Comments: 19252 sq. ft., most recent use—veh maint, off-site use only

Bldgs. 02482, 02484
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820098
Status: Unutilized
Comments: 8359 sq. ft., most recent use—gen purp, off-site use only

Bldg. 02483
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820099
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt, off-site use only

Bldgs. 02504, 02505
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820100
Status: Unutilized
Comments: 11720/17434 sq. ft., most recent use—lodging, off-site use only

Bldgs. 02831, E3488
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820101
Status: Unutilized
Comments: 576/64 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 2831A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820102
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. 03320
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820103
Status: Unutilized
Comments: 10600 sq. ft., most recent use—admin, off-site use only

Bldg. E3466
Aberdeen Proving Ground
Aberdeen MD
Landholding Agency: Army
Property Number: 21200820104
Status: Unutilized
Comments: 236 sq. ft., most recent use—protective barrier, off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820105
Status: Unutilized
Directions: E3510, E3570, E3640, E3832
Comments: various sq. ft., most recent use—lab, off-site use only

Bldg. E3544
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820106
Status: Unutilized
Comments: 5400 sq. ft., most recent use—ind waste, off-site use only

Bldgs. E3561, 03751
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820107
Status: Unutilized
Comments: 64/189 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 03754
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820108
Status: Unutilized
Comments: 324 sq. ft., most recent use—classroom, off-site use only

Bldg. 3823A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army

Property Number: 21200820109
Status: Unutilized
Comments: 113 sq. ft., most recent use—shed, off-site use only

Bldg. E3948
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820110
Status: Unutilized
Comments: 3420 sq. ft., most recent use—emp chg fac, off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820111
Status: Unutilized
Directions: E5057, E5058, E5246, 05258
Comments: various sq. ft., most recent use—storage, off-site use only

Bldgs. E5106, 05256
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820112
Status: Unutilized
Comments: 18621/8720 sq. ft., most recent use—office, off-site use only

Bldg. E5126
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820113
Status: Unutilized
Comments: 17664 sq. ft., most recent use—heat plt, off-site use only

Bldg. E5128
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820114
Status: Unutilized
Comments: 3750 sq. ft., most recent use—substation, off-site use only

Bldg. E5188
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820115
Status: Unutilized
Comments: 22790 sq. ft., most recent use—lab, off-site use only

Bldg. E5179
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820116
Status: Unutilized
Comments: 47335 sq. ft., most recent use—info sys, off-site use only

Bldg. E5190
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820117
Status: Unutilized
Comments: 874 sq. ft., most recent use—storage, off-site use only

Bldg. 05223
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820118
Status: Unutilized
Comments: 6854 sq. ft., most recent use—gen rep inst, off-site use only

Bldgs. 05259, 05260
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820119
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maint, off-site use only

Bldgs. 05263, 05264
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820120
Status: Unutilized
Comments: 200 sq. ft., most recent use—org space, off-site use only

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820121
Status: Unutilized
Directions: 05267, E5294, E5327, E5441, E5485
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5292
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820122
Status: Unutilized
Comments: 1166 sq. ft., most recent use—comp rep inst, off-site use only

Bldg. E5380
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820123
Status: Unutilized
Comments: 9176 sq. ft., most recent use—lab, off-site use only

Bldg. E5452
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820124
Status: Unutilized
Comments: 9623 sq. ft., off-site use only

Bldg. 05654
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820125
Status: Unutilized
Comments: 38 sq. ft., most recent use—shed, off-site use only

Bldg. 05656
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820126
Status: Unutilized
Comments: 2240 sq. ft., most recent use—overhead protection off-site use only

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820127
Status: Unutilized
Directions: E5730, E5738, E5915, E5928, E6875
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5770
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820128
Status: Unutilized
Comments: 174 sq. ft., most recent use—cent wash, off-site use only

Bldg. E5840
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820129
Status: Unutilized
Comments: 14200 sq. ft., most recent use—lab, off-site use only

Bldg. E5946
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820130
Status: Unutilized
Comments: 2147 sq. ft., most recent use—igloo str, off-site use only

Bldg. E6872
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820131
Status: Unutilized
Comments: 1380 sq. ft., most recent use—dispatch, off-site use only

Bldgs. E7331, E7332, E7333
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820132
Status: Unutilized
Comments: most recent use—protective barrier, off-site use only

Bldg. E7821
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820133
Status: Unutilized
Comments: 3500 sq. ft., most recent use—xmitter bldg, off-site use only

Bldg. 02483
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920025
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt bldg., off-site use only

Bldg. 03320
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920026
Status: Unutilized
Comments: 10,600 sq. ft., most recent use—admin., off-site use only

Bldg. 06186
Ft. Detrick
Frederick MD 21702
Landholding Agency: Army
Property Number: 21201110026
Status: Unutilized

Comments: off-site removal only, 14,033 sq. ft., current use: communications ctr., bldg. not energy efficient but fair condition

Bldg. 01692
Ft. Detrick
Frederick MD 21702
Landholding Agency: Army
Property Number: 21201110028
Status: Unutilized
Comments: off-site removal only, 1,000 sq.ft., current use; communications ctr., bldg. is not energy efficient but in fair condition

Missouri

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Directions:
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Directions:
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood MO 65473
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Directions:
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Directions:
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Directions:
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410110
Status: Unutilized
Directions: 07036, 07050, 07054, 07102, 07400, 07401, 08245, 08249, 08251, 08255, 08257, 08261.
Comments: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only

6 Bldgs
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410111
Status: Unutilized
Directions: 07044, 07106, 07107, 08260, 08281, 08300
Comments: 9520 sq ft., 8 plex housing quarters, potential contaminants, off-site use only

15 Bldgs
Fort Leaonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410112
Status: Unutilized
Directions: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldgs 08283, 08285
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410113
Status: Unutilized
Comments: 2240 sq ft, 2 plex housing quarters, potential contaminants, off-site use only

15 Bldgs
Fort Leonard Wood
Ft. Leonard Wood MO 65743–0827
Landholding Agency: Army
Property Number: 21200410114
Status: Unutilized
Directions: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290–08296, 08301
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldg 09432
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410115
Status: Unutilized
Comments: 8724 sq ft., 6-plex housing quarters, potential contaminants, off-site use only

Bldgs. 5006 and 5013
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200430064
Status: Unutilized
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only

Bldgs. 13210, 13710
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200430065
Status: Unutilized
Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison MT 59636
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
GSA Number:
Comments: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison MT 59636
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
GSA Number:
Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations

Bldg. 00001
Sheridan Hall USARC
Helena MT 59601
Landholding Agency: Army
Property Number: 21200540093
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—Reserve Center

Bldg. 00003
Sheridan Hall USARC
Helena MT 59601
Landholding Agency: Army
Property Number: 21200540094
Status: Unutilized
Comments: 1950 sq. ft., most recent use—maintenance/storage

New Jersey

Bldg. 732
Armament R Engineering Center
Picatinny Arsenal NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Directions:
Comments: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, Center
Picatinny Arsenal NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
GSA Number:
Comments: 144 sq. ft., most recent use—storage, off-site use only

5 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200940032
Status: Unutilized
Directions: 3710, 3711, 3712, 3713, 3714
Comments: residential trailers, needs rehab, off-site use only

Bldgs. 3704, 3706
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201010016
Status: Unutilized
Comments: 768 sq. ft. residential trailers, needs rehab, off-site use only

New Mexico

Bldg. 34198
White Sands Missile Range
Dona Ana NM 88002
Landholding Agency: Army
Property Number: 21200230062
Status: Excess

GSA Number:
Comments: 107 sq. ft., most recent use—security, off-site use only

New York

Bldg.1227
U.S. Military Academy
Highlands NY 10996–1592
Landholding Agency: Army
Property Number: 21200440074
Status: Unutilized
Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Bldg. 2218
Stewart Newburg USARC
New Windsor NY 12553–9000
Landholding Agency: Army
Property Number: 21200510067
Status: Unutilized
Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

7 Bldgs.
Stewart Newburg USARC
New Windsor NY 12553–9000
Landholding Agency: Army
Property Number: 21200510068
Status: Unutilized
Directions: 2122, 2124, 2126, 2128, 2106, 2108, 2104
Comments: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

Bldg. 1230
U.S. Army Garrison
Orange NY 10996
Landholding Agency: Army
Property Number: 21200940014
Status: Unutilized
Comments: 4538 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

Bldg. 4802
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201010019
Status: Unutilized
Comments: 3300 sq. ft., most recent use—hdgts. facility, off-site use only

Bldgs. 4813
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201010020
Status: Unutilized
Comments: 750 sq. ft., most recent use—wash rack, off-site use only

Bldg. 4814
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201010021
Status: Unutilized
Comments: 2592 sq. ft., most recent use—item repair, off-site use only

Bldgs. 1240, 1255
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201010022
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. facility, off-site use only

6 Bldgs.
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201010023
Status: Unutilized
Directions: 1248, 1250, 1276, 2361, 4816, 4817
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. 1050
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201010024
Status: Unutilized
Comments: 1493 sq. ft., most recent use—training, off-site use only

Bldg. 10791
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21201010025
Status: Unutilized
Comments: 72 sq. ft., most recent use—smoking shelter, off-site use only

6 Bldgs.
Ft. Drum
Watertown NY 13602
Landholding Agency: Army
Property Number: 21201110049
Status: Underutilized
Directions: 01000, 01001, 01003, 01008, 01010, 01012
Comments: off-site removal only, multipule bldgs. w/varies sq.ft., current use varies

Oklahoma

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Directions:
Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Directions:
Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Directions:
Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. T–4226
Fort Sill
Lawton OK 73503
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Directions:
Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
null
Lawton OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Directions:
Comments: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
null
Lawton OK 73503
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Directions:
Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building P–5042
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Directions:
Comments: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Directions: T–6465, T–6466, T–6467, T–6468
Comments: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only

Bldg. T–810
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Directions:
Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Directions:
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Directions:
Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1468, T–1469
Fort Sill
Lawton OK 73503–5100

Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Directions:
Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Directions:
Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Directions:
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2184
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Directions:
Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Directions:
Comments: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Directions:
Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Directions:
Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Directions:
Comments: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Directions:
Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Directions:
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Directions:
Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Directions:
Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
GSA Number:
Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
GSA Number:
Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2582
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
GSA Number:
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2914
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
GSA Number:
Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
GSA Number:
Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
GSA Number:
Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
GSA Number:
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
GSA Number:
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
GSA Number:
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S–4023
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
GSA Number:
Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized

GSA Number:
Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
GSA Number:
Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
GSA Number:
Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
GSA Number:
Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
GSA Number:
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Fort Sill
Lawton OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
GSA Number:
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 00937, 00957
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200710104
Status: Unutilized
Comments: 1558 sq. ft., most recent use—storage shed, off-site use only

Bldg. 01514
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200710105
Status: Unutilized
Comments: 1602 sq. ft., most recent use—storage, off-site use only

Bldg. 05685
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200820152
Status: Unutilized
Comments: 24,072 sq. ft., concrete block/w brick, off-site use only

Bldg. 07480
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920002
Status: Unutilized
Comments: 1200 sq. ft., most recent use—recreation, off-site use only

Bldgs. 01509, 01510
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920060
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. shop, off-site use only

4 Bldgs.
Fort Sill
2591, 2593, 2595, 2604
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920061
Status: Unutilized
Comments: various sq. ft., most recent use—classroom/admin, off-site use only

Bldg. 06456
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200930003
Status: Unutilized
Comments: 413 sq. ft. range support facility, off-site use only

Fort Sill (5 Bldgs.)
2583–87 Currie Road
Lawton OK 73501–5100
Landholding Agency: Army
Property Number: 21201110022
Status: Unutilized
Directions: Bldgs: 02583, 02584, 02585, 02586, 02587
Comments: Off-site removal only, sq. ft. varies; current use varies

Fort Sill (5 Bldgs.)
Currie Road
Lawton OK 73501–5100
Landholding Agency: Army
Property Number: 21201110023
Status: Unutilized
Directions: Bldgs. 02588, 02769, 02770, 02771, 02950?
Comments: Off-site removal only, sq. ft. varies; current use varied

Bldgs. 02990 & 05020
Fort Sill
Lawton OK 73501–5100
Landholding Agency: Army
Property Number: 21201110024
Status: Unutilized
Comments: Off-site removal only, bldg. 02990—3,715 sq. ft. and bldg. 05020—6,682 sq. ft.; current use fast food facility and storage

South Dakota

Bldg. 03001
Jonas H. Lien AFRC
Sioux Falls SD 57104
Landholding Agency: Army
Property Number: 21200740187
Status: Unutilized
Comments: 33282 sq. ft., most recent use—training center

Bldg. 03003
Jonas H. Lien AFRC
Sioux Falls SD 57104
Landholding Agency: Army
Property Number: 21200740188
Status: Unutilized
Comments: 4675 sq. ft., most recent use—vehicle maint. shop

Tennessee

Bldg. Trail
Fort Campbell
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920010
Status: Excess
Comments: 2104 sq. ft., double-wide trailer, off-site use only

Texas

Bldg. 7137, Fort Bliss
null
El Paso TX 79916
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Directions:
Comments: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 92043
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
GSA Number:
Comments: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
GSA Number:
Comments: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
GSA Number:
Comments: 2108 sq. ft., most recent use—maint., off-site use only

Bldg. 56305
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
GSA Number:
Comments: 2160 sq. ft., most recent use—admin., off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
GSA Number:
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
GSA Number:
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
GSA Number:
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
GSA Number:
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
GSA Number:
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
GSA Number:
Comments: 1306 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
GSA Number:
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. P6220, P6222
Fort Sam Houston
Camp Bullis
San Antonio TX
Landholding Agency: Army
Property Number: 21200330197
Status: Unutilized
GSA Number:
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Fort Sam Houston
Camp Bullis
San Antonio TX
Landholding Agency: Army
Property Number: 21200330198
Status: Unutilized
GSA Number:
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldg. 92039
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200640101
Status: Excess
Comments: 80 sq. ft., most recent use—storage, off-site use only

Bldgs. 04281, 04283
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720085
Status: Excess
Comments: 4000/8020 sq. ft., most recent use—storage shed, off-site use only

Bldg. 04284
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720086
Status: Excess
Comments: 800 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 04285
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720087
Status: Excess
Comments: 8000 sq. ft., most recent use—storage shed, off-site use only

Bldg. 04286
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720088
Status: Excess
Comments: 36,000 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 04291
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720089
Status: Excess
Comments: 6400 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 4410
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720090
Status: Excess
Comments: 12,956 sq. ft., presence of asbestos, most recent use—simulation center, off-site use only

Bldgs. 10031, 10032, 10033
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720091
Status: Excess
Comments: 2578/3383 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 56524, 56532
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720092
Status: Excess
Comments: 600 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. 56435
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720093
Status: Excess
Comments: 3441 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 05708
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720094
Status: Excess
Comments: 1344 sq. ft., most recent use—community center, off-site use only

Bldg. 90001
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720095
Status: Excess
Comments: 3574 sq. ft., presence of asbestos, most recent use—transmitter bldg., off-site use only

Bldg. 93013
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720099
Status: Excess
Comments: 800 sq. ft., most recent use—club, off-site use only

5 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740195
Status: Excess
Directions: 56541, 56546, 56547, 56548, 56638
Comments: 1120/1133 sq. ft., presence of asbestos, most recent use—lavatory, off-site use only

4 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810048
Status: Unutilized
Directions: 00229, 00230, 00231, 00232
Comments: various sq. ft., presence of asbestos, most recent use—training aids center, off-site use only

Bldg. 00324
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810049
Status: Unutilized
Comments: 13,319 sq. ft., most recent use—roller skating rink, off-site use only

Bldgs. 00710, 00739, 00741
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810050
Status: Unutilized
Comments: various sq. ft., presence of asbestos, most recent use—repair shop, off-site use only

5 Bldgs.

Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810051
Status: Unutilized
Directions: 00711, 00712, 02219, 02612, 05780
Comments: various sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 00713
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810052
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—hdqts. bldg., off-site use only

Bldgs. 1938, 04229
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810053
Status: Unutilized
Comments: 2736/9000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 02218, 02220
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810054
Status: Unutilized
Comments: 7289/1456 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. 0350
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810055
Status: Unutilized
Comments: 28,290 sq. ft., presence of asbestos, most recent use—veh. maint. shop, off-site use only

Bldg. 04449
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810056
Status: Unutilized
Comments: 3822 sq. ft., most recent use—police station, off-site use only

Bldg. 91077
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810057
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—educational facility, off-site use only

Bldg. 1610
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200810059
Status: Excess
Comments: 11056 sq. ft., concrete/stucco, most recent use—gas station/store, off-site use only

Bldg. 1680
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200810060
Status: Excess
Comments: 3690 sq. ft., concrete/stucco, most recent use—restaurant, off-site use only

12 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200820153
Status: Excess
Directions: 56522, 56523, 56525, 56533, 56534, 56535, 56539, 56542, 56543, 56544, 56545, 56549
Comments: 600/607 sq. ft., presence of asbestos, most recent use—dining, off-site use only

10 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200820154
Status: Excess
Directions: 56622, 56623, 56624, 56625, 56629, 56632, 56633, 56634, 56635, 56639
Comments: 500/507 sq. ft., presence of asbestos, most recent use—dining, off-site use only

6 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840070
Status: Excess
Directions: 56412, 57023, 57024, 57025, 57009, 57010
Comments: presence of asbestos, most recent use—storage, off-site use only

9 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840071
Status: Excess
Directions: 56529, 56618, 56702, 56710, 56752, 56753, 56754, 56755, 56759
Comments: presence of asbestos, most recent use—dining facility, off-site use only

Bldgs. 56703
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840072
Status: Excess
Comments: 1306 sq. ft., presence of asbestos, most recent use—shower, off-site use only

Bldg. 57005
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840073
Status: Excess
Comments: 500 sq. ft., presence of asbestos, most recent use—water supply/treatment, off-site use only

Utah

Bldg. 00001
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740196
Status: Excess
Comments: 16543 sq. ft., most recent use—training center, off-site use only

Bldg. 00002
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740197
Status: Excess
Comments: 3842 sq. ft., most recent use—vehicle maint. shop, off-site use only

Bldg. 00005
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740198
Status: Excess
Comments: 96 sq. ft., most recent use—storage, off-site use only

Virginia

Fort Story
null
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720065
Status: Unutilized
Comments: 525 sq. ft., most recent use—power plant, off-site use only

Bldg. 01633
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720076
Status: Unutilized
Comments: 240 sq. ft., most recent use—storage, off-site use only

Bldg. 02786
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720084
Status: Unutilized
Comments: 1596 sq. ft., most recent use—admin., off-site use only

Bldg. P0838
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200830005
Status: Unutilized
Comments: 576 sq. ft., most recent use—rec shelter, off-site use only

Washington

Bldg. CO909, Fort Lewis
null
Ft. Lewis WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Directions:
Comments: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
null
Ft. Lewis WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Directions:
Comments: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
null
Ft. Lewis WA 98433–9500

Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Directions:
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
null
Ft. Lewis WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Directions:
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
null
Ft. Lewis WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Directions:
Comments: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
null
Ft. Lewis WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Directions:
Comments: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
null
Ft. Lewis WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Directions:
Comments: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
null
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Directions:
Comments: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Directions:
Comments: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
null
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Directions:
Comments: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Directions:
Comments: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Directions:
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Directions:
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
GSA Number:
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
GSA Number:
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
GSA Number:
Directions: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
GSA Number:
Directions: U003A, U004B, U006C, U015B, U016B, U019B
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
GSA Number:
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
GSA Number:
Comments: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
GSA Number:
Directions: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Comments: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
GSA Number:
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
GSA Number:
Comments: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
GSA Number:
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
GSA Number:
Comments: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A

Fort Lewis
Ft. Lewis WA
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
GSA Number:
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
GSA Number:
Comments: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
GSA Number:
Comments: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
GSA Number:
Comments: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
GSA Number:
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
GSA Number:
Comments: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
GSA Number:
Comments: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
GSA Number:
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
GSA Number:
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
GSA Number:
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
GSA Number:
Comments: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
GSA Number:
Comments: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
GSA Number:
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
GSA Number:
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
GSA Number:
Directions: U058A, U103A, U018A
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
GSA Number:
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
GSA Number:
Comments: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
GSA Number:
Directions: U101B, U101C, U507B, U557A
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
GSA Number:
Comments: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
GSA Number:
Directions: U111A, U015A, U024E, U052F, U109A, U110A
Comments: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
GSA Number:
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
GSA Number:
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A

Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
GSA Number:
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
GSA Number:
Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
GSA Number:
Comments: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
GSA Number:
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
GSA Number:
Comments: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
GSA Number:
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
GSA Number:
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
GSA Number:
Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
GSA Number:
Comments: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
GSA Number:
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
GSA Number:
Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
GSA Number:
Comments: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
GSA Number:
Comments: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
GSA Number:
Comments: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
GSA Number:
Comments: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
GSA Number:
Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
GSA Number:
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
GSA Number:
Comments: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis WA 98433
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
GSA Number:
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Land

Maryland

2 acres
Fort Meade
Odenton Rd/Rt 175
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200640095
Status: Unutilized
Comments: light industrial

16 acres
Fort Meade
Rt 198/Airport Road
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200640096
Status: Unutilized
Comments: light industrial

Ohio

Land
Defense Supply Center
Columbus OH 43216–5000
Landholding Agency: Army
Property Number: 21200340094
Status: Excess
GSA Number:
Comments: 11 acres, railroad access

Tennessee

Parcel No. 1
Fort Campbell
Tract No. 13M–3
Montgomery TN 42223
Landholding Agency: Army

Property Number: 21200920003
Status: Excess
Comments: 6.89 acres/thick vegetation

Parcel No. 2
Fort Campbell
Tract Nos.12M–16B & 13M–3
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920004
Status: Excess
Comments: 3.41 acres/wooded

Parcel No. 3
Fort Campbell
Tract No. 12M–4
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920005
Status: Excess
Comments: 6.56 acre/wooded

Parcel No. 4
Fort Campbell
Tract Nos10M–22 &10M–23
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920006
Status: Excess
Comments: 5.73 acres/wooded

Parcel No. 5
Fort Campbell
Tract No. 10M–20
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920007
Status: Excess
Comments: 3.86 acres/wooded

Parcel No. 7
Fort Campbell
Tract No. 10M–10
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920008
Status: Excess
Comments: 9.47 acres/wooded

Parcel No. 8
Fort Campbell
Tract No. 8M–7
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920009
Status: Excess
Comments: 15.13 acres/wooded

Parcel No. 6
Fort Campbell
Hwy 79
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200940013
Status: Excess
Comments: 4.55 acres, wooded w/dirt road/ fire break

Texas

1 acre
Fort Sam Houston
San Antonio TX 78234
Landholding Agency: Army
Property Number: 21200440075
Status: Excess
Comments: 1 acre, grassy area

Suitable/Unavailable Properties

Building

Alabama

Bldg. 01433
Fort Rucker
Ft. Rucker AL 36362
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
GSA Number:
Comments: 800 sq. ft., most recent use—office, off-site use only

Bldg. 30105
Fort Rucker
Ft. Rucker AL 36362
Landholding Agency: Army
Property Number: 21200510052
Status: Excess
Comments: 4100 sq. ft., most recent use—admin., off-site use only

Bldg. 40115
Fort Rucker
Ft. Rucker AL 36362
Landholding Agency: Army
Property Number: 21200510053
Status: Excess
Comments: 34,520 sq. ft., most recent use—storage, off-site use only

Bldg. 25303
Fort Rucker
Dale AL 36362
Landholding Agency: Army
Property Number: 21200520074
Status: Excess
Comments: 800 sq. ft., most recent use—airfield operations, off-site use only

Bldg. 25304
Fort Rucker
Dale AL 36362
Landholding Agency: Army
Property Number: 21200520075
Status: Excess
Comments: 1200 sq. ft., poor condition, most recent use—fire station, off-site use only

Arizona

Bldg. 22529
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520077
Status: Excess
Comments: 2543 sq. ft., most recent use—storage, off-site use only

Bldg. 22541
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520078
Status: Excess
Comments: 1300 sq. ft., most recent use—storage, off-site use only

Bldg. 30020
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520079
Status: Excess
Comments: 1305 sq. ft., most recent use—storage, off-site use only

Bldg. 30021
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520080
Status: Excess
Comments: 144 sq. ft., most recent use—storage, off-site use only

Bldg. 22040
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200540076
Status: Excess
Comments: 1131 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 22540
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200620067
Status: Excess
Comments: 958 sq. ft., most recent use—storage, off-site use only

Colorado

Bldg. S6264
Fort Carson
Ft. Carson CO 80913
Landholding Agency: Army
Property Number: 21200340084
Status: Unutilized
GSA Number:
Comments: 19,499 sq. ft., most recent use—office, off-site use only

Bldg. S6285
Fort Carson
Ft. Carson CO 80913
Landholding Agency: Army
Property Number: 21200420176
Status: Unutilized
Comments: 19,478 sq. ft., most recent use—admin., off-site use only

Bldg. S6287
Fort Carson
Ft. Carson CO 80913
Landholding Agency: Army
Property Number: 21200420177
Status: Unutilized
Comments: 10,076 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 06225
Fort Carson
El Paso CO 80913–4001
Landholding Agency: Army
Property Number: 21200520084
Status: Unutilized
Comments: 24,263 sq. ft., most recent use—admin., off-site use only

Georgia

Bldg. T201
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420002
Status: Excess
Comments: 1828 sq. ft., most recent use—credit union, off-site use only

Bldg. T234
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420008
Status: Excess
Comments: 2624 sq. ft., most recent use—admin., off-site use only

Bldg. T702
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420010

Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T703
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420011
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T704
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420012
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. P813
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420013
Status: Excess
Comments: 43,055 sq. ft., most recent use—maint. hanger/Co Hq., off-site use only

Bldgs. S843, S844, S845
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420014
Status: Excess
Comments: 9383 sq. ft., most recent use—maint hanger, off-site use only

Bldg. P925
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420015
Status: Excess
Comments: 27,681 sq. ft., most recent use—fitness center, off-site use only

Bldg. P1277
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420024
Status: Excess
Comments: 13,981 sq. ft., most recent use—barracks/dining, off-site use only

Bldg. T1412
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420025
Status: Excess
Comments: 9186 sq. ft., most recent use—warehouse, off-site use only

Bldg. 8658
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420029
Status: Excess
Comments: 8470 sq. ft., most recent use—storage, off-site use only

Bldg. 8659
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420030
Status: Excess
Comments: 8470 sq. ft., most recent use—storage, off-site use only

Bldgs. 8675, 8676
Hunter Army Airfield
Garrison GA 31409
Landholding Agency: Army
Property Number: 21200420031
Status: Excess
Comments: 4000 sq. ft., most recent use—ship/recv facility, off-site use only

Bldg. 5978
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200420038
Status: Excess
Comments: 1344 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200420041
Status: Excess
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200420042
Status: Excess
Comments: 2016 sq. ft., most recent use—ammo storage, off-site use only

Bldg. 5995
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200420043
Status: Excess
Comments: 114 sq. ft., most recent use—storage, off-site use only

Bldg. T01
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420181
Status: Excess
Comments: 11,682 sq. ft., most recent use—admin., off-site use only

Bldg. T04
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420182
Status: Excess
Comments: 8292 sq. ft., most recent use—admin., off-site use only

Bldg. T05
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420183
Status: Excess
Comments: 7992 sq. ft., most recent use—admin., off-site use only

Bldg. T06
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420184
Status: Excess
Comments: 3305 sq. ft., most recent use—communication center, off-site use only

Bldg. T55
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420187
Status: Excess
Comments: 6490 sq. ft., most recent use—admin., off-site use only

Bldg. T85
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420188
Status: Excess
Comments: 3283 sq. ft., most recent use—post chapel, off-site use only

Bldg. T131
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420189
Status: Excess
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T132
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420190
Status: Excess
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T157
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420191
Status: Excess
Comments: 1440 sq. ft., most recent use—education center, off-site use only

Bldg. 01002
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420197
Status: Excess
Comments: 9267 sq. ft., most recent use—maintenance shop, off-site use only

Bldg. 01003
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420198
Status: Excess
Comments: 9267 sq. ft., most recent use—admin, off-site use only

Bldg. 19101
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420215
Status: Excess
Comments: 6773 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. 19102
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420216
Status: Excess
Comments: 3250 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. T19111
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army

Property Number: 21200420217
Status: Excess
Comments: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. 19112
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420218
Status: Excess
Comments: 1344 sq. ft., most recent use—storage, off-site use only

Bldg. 19113
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420219
Status: Excess
Comments: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. T19201
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420220
Status: Excess
Comments: 960 sq. ft., most recent use—physical fitness center, off-site use only

Bldg. 19202
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420221
Status: Excess
Comments: 1210 sq. ft., most recent use—community center, off-site use only

Bldg. 19204 thru 19207
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420222
Status: Excess
Comments: 960 sq. ft., most recent use—admin., off-site use only

Bldgs. 19208 thru 19211
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420223
Status: Excess
Comments: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19212
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420224
Status: Excess
Comments: 1248 sq. ft., off-site use only

Bldg. 19213
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420225
Status: Excess
Comments: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19214
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420226
Status: Excess
Comments: 1796 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19215
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420227
Status: Excess
Comments: 1948 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19216
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420228
Status: Excess
Comments: 1540 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19217
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420229
Status: Excess
Comments: 120 sq. ft., most recent use—nav aids bldg., off-site use only

Bldg. 19218
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420230
Status: Excess
Comments: 2925 sq. ft., most recent use—general installation bldg., off-site use only

Bldgs. 19219, 19220
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420231
Status: Excess
Comments: 1200 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19223
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420232
Status: Excess
Comments: 6433 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19225
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420233
Status: Excess
Comments: 4936 sq. ft., most recent use—dining facility, off-site use only

Bldg. 19226
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420234
Status: Excess
Comments: 136 sq. ft., most recent use—general purpose installation bldg., off-site use only

Bldg. T19228
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420235
Status: Excess
Comments: 400 sq. ft., most recent use—admin., off-site use only

Bldg. 19229
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420236
Status: Excess
Comments: 640 sq. ft., most recent use—vehicle shed, off-site use only

Bldg. 19232
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420237
Status: Excess
Comments: 96 sq. ft., most recent use—general purpose installation, off-site use only

Bldg. 19233
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420238
Status: Excess
Comments: 48 sq. ft., most recent use—fire support, off-site use only

Bldg. 19236
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420239
Status: Excess
Comments: 1617 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19238
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21200420240
Status: Excess
Comments: 738 sq. ft., off-site use only

Bldg. 01674
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200510056
Status: Unutilized
Comments: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01675
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200510057
Status: Unutilized
Comments: 5475 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01676
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200510058
Status: Unutilized
Comments: 7209 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01677
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200510059
Status: Unutilized
Comments: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01678
Fort Benning
Ft. Benning GA 31905

Landholding Agency: Army
Property Number: 21200510060
Status: Unutilized
Comments: 6488 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 00051
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520087
Status: Excess
Comments: 3196 sq. ft., most recent use—court room, off-site use only

Bldg. 00052
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520088
Status: Excess
Comments: 1250 sq. ft., most recent use—admin., off-site use only

Bldg. 00053
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520089
Status: Excess
Comments: 2844 sq. ft., most recent use—admin., off-site use only

Bldg. 00054
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520090
Status: Excess
Comments: 4425 sq. ft., most recent use—admin., off-site use only

Bldg. 01243
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200610040
Status: Excess
Comments: 1258 sq. ft., most recent use—ref/ac facility, off-site use only

Bldg. 01244
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200610041
Status: Excess
Comments: 4096 sq. ft., presence of asbestos, most recent use—hdqts. facility, off-site use only

Bldg. 01318
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200610042
Status: Excess
Comments: 1500 sq. ft., most recent use—storage, off-site use only

Bldg. 00612
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610043
Status: Excess
Comments: 5298 sq. ft., needs rehab, most recent use—health clinic, off-site use only

Bldg. 00614
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610044
Status: Excess
Comments: 10,157 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00618
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610045
Status: Excess
Comments: 6137 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00628
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610046
Status: Excess
Comments: 10,050 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 01079
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610047
Status: Excess
Comments: 7680 sq. ft., most recent use—range/target house, off-site use only

Bldg. 07901
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610049
Status: Excess
Comments: 4800 sq. ft., most recent use—range support, off-site use only

Bldg. 08031
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610050
Status: Excess
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08081
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610052
Status: Excess
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08252
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610053
Status: Excess
Comments: 145 sq. ft., most recent use—control tower, off-site use only

Louisiana

Bldg. T401
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540084
Status: Unutilized
Comments: 2169 sq. ft., most recent use—admin., off-site use only

Bldgs. T406, T407, T411
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540085
Status: Unutilized
Comments: 6165 sq. ft., most recent use—admin., off-site use only

Bldg. T412
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540086
Status: Unutilized
Comments: 12,251 sq. ft., most recent use—admin., off-site use only

Bldgs. T414, T421
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540087
Status: Unutilized
Comments: 6165/1688 sq. ft., most recent use—admin., off-site use only

Maryland

Bldg. 8608
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410099
Status: Unutilized
Comments: 2372 sq. ft., concrete block, most recent use—PX exchange, off-site use only

Bldg. 8612
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410101
Status: Unutilized
Comments: 2372 sq. ft., concrete block, most recent use—family life ctr., off-site use only

Bldg. 0001A
Federal Support Center
Olney MD 20882
Landholding Agency: Army
Property Number: 21200520114
Status: Unutilized
Comments: 9000 sq. ft., most recent use—storage

Bldg. 0001C
Federal Support Center
Olney MD 20882
Landholding Agency: Army
Property Number: 21200520115
Status: Unutilized
Comments: 2904 sq. ft., most recent use—mess hall

Bldgs. 00032, 00H14, 00H24
Federal Support Center
Olney MD 20882
Landholding Agency: Army
Property Number: 21200520116
Status: Unutilized
Comments: various sq. ft., most recent use—storage

Bldgs. 00034, 00H016
Federal Support Center
Olney MD 20882
Landholding Agency: Army
Property Number: 21200520117
Status: Unutilized
Comments: 400/39 sq. ft., most recent use—storage

Bldgs. 00H10, 00H12
Federal Support Center
Olney MD 20882
Landholding Agency: Army
Property Number: 21200520118

Status: Unutilized
Comments: 2160/469 sq. ft., most recent use—vehicle maintenance

Michigan

Bldg. 00001
Sheridan Hall USARC
501 Euclid Avenue
Helena MI 59601–2865
Landholding Agency: Army
Property Number: 21200510066
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—reserve center

Missouri

Bldg. 1230
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200340087
Status: Unutilized
GSA Number:
Comments: 9160 sq. ft., most recent use—training, off-site use only

Bldg. 1621
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200340088
Status: Unutilized
GSA Number:
Comments: 2400 sq. ft., most recent use—exchange branch, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410102
Status: Unutilized
Comments: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410103
Status: Unutilized
Comments: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410104
Status: Unutilized
Comments: 120 sq. ft., most recent use—observation tower, off-site use only

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200410105
Status: Unutilized
Comments: 800 sq. ft., most recent use—range support, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200420059
Status: Unutilized
Comments: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200420060
Status: Unutilized
Comments: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200420061
Status: Unutilized
Comments: 120 sq. ft., most recent use—obs. tower, off-site use only

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood MO 65743–8944
Landholding Agency: Army
Property Number: 21200420062
Status: Unutilized
Comments: 800 sq. ft., most recent use—support bldg., off-site use only

Bldg. 00467
Fort Leonard Wood
Ft. Leonard Wood MO 65743
Landholding Agency: Army
Property Number: 21200530085
Status: Unutilized
Comments: 2790 sq. ft., most recent use—fast food facility, off-site use only

New York

Bldgs. 1511–1518
U.S. Military Academy
Training Area
Highlands NY 10996
Landholding Agency: Army
Property Number: 21200320160
Status: Unutilized
GSA Number:
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1523–1526
U.S. Military Academy
Training Area
Highlands NY 10996
Landholding Agency: Army
Property Number: 21200320161
Status: Unutilized
GSA Number:
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1704–1705, 1721–1722
U.S. Military Academy
Training Area
Highlands NY 10996
Landholding Agency: Army
Property Number: 21200320162
Status: Unutilized
GSA Number:
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldg. 1723
U.S. Military Academy
Training Area
Highlands NY 10996
Landholding Agency: Army
Property Number: 21200320163
Status: Unutilized
GSA Number:
Comments: 2400 sq. ft., needs rehab, most recent use—day room, off-site use only

Bldgs. 1706–1709
U.S. Military Academy
Training Area
Highlands NY 10996
Landholding Agency: Army
Property Number: 21200320164
Status: Unutilized
GSA Number:
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1731–1735
U.S. Military Academy
Training Area
Highlands NY 10996
Landholding Agency: Army
Property Number: 21200320165
Status: Unutilized
GSA Number:
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

North Carolina

Bldg. N4116
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
GSA Number:
Comments: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
GSA Number:
Comments: 8056, 500 sq. ft., most recent use—admin., off-site use only

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
GSA Number:
Comments: 9000 sq. ft., most recent use—hq. bldg., off-site use only

Bldgs. 4244, 4246
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
GSA Number:
Comments: 9000 sq. ft., most recent use—storage, off-site use only

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
GSA Number:
Comments: 7680 sq. ft., most recent use—storage, off-site use only

Bldg. 04335
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440090
Status: Excess
Comments: 3378 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04465
Fort Hood

Bell TX 76544
Landholding Agency: Army
Property Number: 21200440094
Status: Excess
Comments: 5310 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04468
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440096
Status: Excess
Comments: 3100 sq. ft., possible asbestos, most recent use—misc., off-site use only

Bldgs. 04475–04476
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440098
Status: Excess
Comments: 3241 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04477
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440099
Status: Excess
Comments: 3100 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 07002
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440100
Status: Excess
Comments: 2598 sq. ft., possible asbestos, most recent use—fire station, off-site use only

Bldg. 57001
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440105
Status: Excess
Comments: 53,024 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldgs. 125, 126
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620075
Status: Excess
Comments: 2700/7200 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 190
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620076
Status: Excess
Comments: 2995 sq. ft., presence of asbestos, most recent use—conf. center, off-site use only

Bldg. 02240
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620078
Status: Excess
Comments: 487 sq. ft., presence of asbestos, most recent use—pool svc bldg, off-site use only

Bldg. 04164
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620079
Status: Excess
Comments: 2253 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldgs. 04218, 04228
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620080
Status: Excess
Comments: 4682/9000 sq. ft., presence of asbestos, most recent use—admin, off-site use only

Bldg. 04272
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620081
Status: Excess
Comments: 7680 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04415
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620083
Status: Excess
Comments: 1750 sq. ft., presence of asbestos, most recent use—classroom, off-site use only

4 Bldgs
Fort Hood
04419, 04420, 04421, 04424
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620084
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

4 Bldgs.
Fort Hood
04425, 04426, 04427, 04429
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620085
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04430
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620087
Status: Excess
Comments: 3241 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04434
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620088
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04439
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620089
Status: Excess
Comments: 3312 sq. ft., presence of asbestos, most recent use—co ops bldg, off-site use only

Bldgs. 04470, 04471
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620090
Status: Excess
Comments: 3241 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04493
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620091
Status: Excess
Comments: 3108 sq. ft., presence of asbestos, most recent use—housing maint., off-site use only

Bldg. 04494
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620092
Status: Excess
Comments: 2686 sq. ft., presence of asbestos, most recent use—repair bays, off-site use only

Bldg. 04632
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620093
Status: Excess
Comments: 4000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04640
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620094
Status: Excess
Comments: 1600 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04645
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620095
Status: Excess
Comments: 5300 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04906
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620096
Status: Excess
Comments: 1040 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 20121
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620097
Status: Excess
Comments: 5200 sq. ft., presence of asbestos, most recent use—rec center, off-site use only

Bldg. 91052
Fort Hood
Bell TX 76544
Landholding Agency: Army

Property Number: 21200620101
Status: Excess
Comments: 224 sq. ft., presence of asbestos, most recent use—lab/test, off-site use only

Bldg. 1345
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740070
Status: Excess
Comments: 240 sq. ft., presence of asbestos, most recent use- oil storage, off-site use only

Bldgs. 1348, 1941
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740071
Status: Excess
Comments: 640/900 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 1919
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740072
Status: Excess
Comments: 80 sq. ft., presence of asbestos, most recent use—pump station, off-site use only

Bldg. 1943
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740073
Status: Excess
Comments: 780 sq. ft., presence of asbestos, most recent use—rod and gun club, off-site use only

Bldg. 1946
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740074
Status: Excess
Comments: 2880 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4205
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740075
Status: Excess
Comments: 600 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4207
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740076
Status: Excess
Comments: 2240 sq. ft., presence of asbestos, most recent use—maint. shop, off-site use only

Bldg. 4208
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740077
Status: Excess
Comments: 9464 sq. ft., presence of asbestos, most recent use—warehouse, off-site use only

Bldgs. 4210, 4211, 4216
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740078
Status: Excess
Comments: 4625/5280 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldg. 4219A
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740079
Status: Excess
Comments: 446 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04252
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740081
Status: Excess
Comments: 9000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4255
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740082
Status: Excess
Comments: 448 sq ft., presence of asbestos, off-site use only

Bldg. 04480
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740083
Status: Excess
Comments: 2700 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04485
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740084
Status: Excess
Comments: 640 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldgs. 04487, 04488
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740085
Status: Excess
Comments: 48/80 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only

Bldg. 04489
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200740086
Status: Excess
Comments: 880 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 4491, 4492
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740087
Status: Excess
Comments: 3108/1040 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldgs. 04902, 04905
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740088
Status: Excess
Comments: 2575/6136 sq. ft., presence of asbestos, most recent use—vet bldg., off-site use only

Bldgs. 04914, 04915, 04916
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740089
Status: Excess
Comments: 371 sq. ft., presence of asbestos, most recent use—animal shelter, off-site use only

Bldg. 20102
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740091
Status: Excess
Comments: 252 sq. ft., presence of asbestos, most recent use—recreation services, off-site use only

Bldg. 20118
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740092
Status: Excess
Comments: 320 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldg. 29027
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740093
Status: Excess
Comments: 2240 sq. ft., presence of asbestos, most recent use—hdqts bldg, off-site use only

Bldg. 56017
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740094
Status: Excess
Comments: 2592 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56202
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740095
Status: Excess
Comments: 1152 sq. ft., presence of asbestos, most recent use—training, off-site use only

Bldg. 56224
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740096
Status: Excess
Comments: 80 sq. ft., presence of asbestos, off-site use only

Bldg. 56305
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740097
Status: Excess

Comments: 2160 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56311
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740098
Status: Excess
Comments: 480 sq. ft., presence of asbestos, most recent use—laundry, off-site use only

Bldg. 56327
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740099
Status: Excess
Comments: 6000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56329
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740100
Status: Excess
Comments: 2080 sq. ft., presence of asbestos, most recent use—officers qtrs., off-site use only

9 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740101
Status: Excess
Directions: 56526, 56527, 56528, 56530, 56531, 56536, 56537, 56538, 56540
Comments: various sq. ft., presence of asbestos, most recent use—lavatory, off-site use only

Bldg. 92043
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740102
Status: Excess
Comments: 450 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 92072
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740103
Status: Excess
Comments: 2400 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 92083
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740104
Status: Excess
Comments: 240 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only

Bldgs. 04213, 04227
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740189
Status: Excess
Comments: 14183/10500 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 4404
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740190
Status: Excess
Comments: 8043 sq ft., presence of asbestos, most recent use—training bldg., off-site use only

Bldg. 56607
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740191
Status: Excess
Comments: 3552 sq. ft., presence of asbestos, most recent use—chapel, off-site use only

Bldg. 91041
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740192
Status: Excess
Comments: 1920 sq. ft., presence of asbestos, most recent use—shed, off-site use only

5 Bldgs.
Fort Hood
93010, 93011, 93012, 93014
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740193
Status: Excess
Comments: 210/800 sq. ft., presence of asbestos, most recent use—private club, off-site use only

Bldg. 94031
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740194
Status: Excess
Comments: 1008 sq. ft., presence of asbestos, most recent use—training, off-site use only

Virginia

Bldg. T2827
Fort Pickett
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21200320172
Status: Unutilized
GSA Number:
Comments: 3550 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. T2841
Fort Pickett
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21200320173
Status: Unutilized
GSA Number:
Comments: 2950 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. 01014
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720067
Status: Unutilized
Comments: 1014 sq. ft., most recent use—admin., off-site use only

Bldg. 01063
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720072
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldg. 00215
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720073
Status: Unutilized
Comments: 2540 sq. ft., most recent use—admin., off-site use only

4 Bldgs.
Fort Eustis
01514, 01523, 01528, 01529
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720074
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

4 Bldgs.
Fort Eustis
01534, 01542, 01549, 01557
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720075
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01707, 01719
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720077
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. 01720
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720078
Status: Unutilized
Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldgs. 01721, 01725
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720079
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01726, 01735, 01736
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720080
Status: Unutilized
Comments: 1144 sq. ft., most recent use—admin., off-site use only

Bldgs. 01734, 01745, 01747
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720081
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. 01741
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720082
Status: Unutilized

Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldg. 02720
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720083
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Washington

Bldg. 05904
Fort Lewis
Ft. Lewis WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
GSA Number:
Comments: 82 sq. ft., most recent use—guard shack, off-site use only

Unsuitable Properties

Buildings (by State)

Alabama

138 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898
Landholding Agency: Army
Property Number: 21200040001–21200040012, 21200120018, 21200220003–21200220004, 21200240007–21200240022, 21200330001–2120330004, 21200340011, 21200340095, 21200420068–21200420071, 21200440001, 21200520002, 21200540002–21200540006, 21200610003, 21200620002, 21200630020, 21200740108, 21200810002, 21200830007, 21200840003–21200840007, 21200920011, 21200940015–21200940017, 21201020002, 21201030002, 21201110008, 21201110008
Status: Unutilized
Reason: Secured Area, Extensive deterioration

40 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200040013, 21200440005, 21200540001, 21200540100, 21200610008, 21200620001, 21200640002–21200640005, 21200720001, 21201010003–21201010005, 21201030004
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs., Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 21200430004, 21201020003, 21201110004
Status: Unutilized
Reason: Extensive deterioration

19 Bldgs., Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21200920029, 21201010002, 21201020001, 21201110036, 21201110058
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 30109, 30112, 30120
Cairns AAF
Daleville AL 36322
Landholding Agency: Army
Property Number: 21201030005
Status: Unutilized
Reasons: Secured Area

Alaska

7 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 21200610001–21200610002, 21201110035
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured area, Floodway

8 Bldgs., Fort Richardson
Ft. Richardson Co: AK 99505
Landholding Agency: Army
Property Number: 21200340006, 21200820058, 21200830006, 21201030001
Status: Excess
Reason: Extensive deterioration

Bldg. 02A60
Noatak Armory
Kotzebue AK
Landholding Agency: Army
Property Number: 21200740105
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Bldgs. 00655, XTENA
Fort Greely
Fort Greely AK 96740
Landholding Agency: Army
Property Number: 21200930004, 21200940021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273, 219120177–219120181
Status: Unutilized
Reason: Secured Area

102 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140006–21200140010, 21200740109–21200740114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area (Most are extensively deteriorated)

7 Bldgs.
Papago Park Military Rsv
Phoenix AZ 85008
Landholding Agency: Army
Property Number: 21200740001–21200740002
Status: Unutilized
Reason: Extensive deterioration, Within airport runway clear zone, Secured Area

Bldgs. 30025, 43003, Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200920030
Status: Excess
Reason: Extensive deterioration

Arkansas

190 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 21200110001–21200110017, 21200140011–21200140014, 21200530001
Status: Unutilized
Reason: Extensive deterioration

20 Bldgs., Pine Bluff Arsenal
Jefferson AR 71602
Landholding Agency: Army
Property Number: 21200820059–21200820060
Status: Unutilized
Reason: Secured Area

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

13 Bldgs.
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
PropertyNumber: 219013582–219013588, 219013590, 219240444–219240446, 21200530003, 21200840009
Status: Underutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

43 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004, 21200240025–21200240030, 21200330007, 21200920031, 21200930005
Status: Unutilized
Reason: Secured Area

66 Bldgs.

Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040, 21200530002, 21200940023, 21201110046
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015, 21199920033–21199920036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

575 Bldgs., Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820205–219820234, 21200530004, 21200540007–21200540031, 21200830009–21200830010
Status: Excess
Reason: Secured Area, Extensive deterioration

24 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 21199940051
Status: Unutilized
Reason: Extensive deterioration

46 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200210001–21200210005, 21200240031–21200240033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

10 Bldgs.
Fort Hunter Liggett
Monterey CA 93928
Landholding Agency: Army
Property Number: 21200840008, 21200940024
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs, March AFRC
Riverside CA 92518
Landholding Agency: Army
Property Number: 21200710001–21200710002
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs., Camp Parks
Dublin CA 94568
Landholding Agency: Army
Property Number: 21201010006
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 00053, Moffett Community Housing
Santa Clara CA 94035
Landholding Agency: Army
Property Number: 21200940022
Status: Unutilized
Reasons: Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

23 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830024, 21200130006–21200130009, 21200420161–21200420164, 21200720003, 21200740003–21200740004, 21200820063, 21200930007, 21201020004
Status: Unutilized
Reason: Extensive deterioration, (Some are within 2000 ft. of flammable or explosive material)

29 Bldgs., Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021, 21200420165–21200420166, 21200610009–21200610010, 21200630023, 21200720002, 21200720007–21200720008, 21200930008
Status: Unutilized
Reason: Extensive deterioration, Secured Area

District of Columbia

Bldg. 51, Fort McNair
Washington, DC
Landholding Agency: Army
Property Number: 21201020005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Georgia

Fort Stewart, Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314-
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

10 Bldgs., Fort Gordon
Augusta Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 21200610012, 21200720009–21200720010
Status: Unutilized
Reason: Extensive deterioration

166 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219610320, 219810028, 219810030, 219830073, 21200030026, 21200330008–21200330010, 21200410002–21200410009, 21200430011–21200430016, 21200440009, 21200510003, 21200610011, 21200620004, 21200630024–21200630027, 21200640007–21200640020, 21200710011, 21200720004–21200720005, 21200740006, 21200740121–21200740122, 21200820064, 21200830011, 21200840015, 21200920014, 21200920032, 21200940027, 21201020006, 21201030007
Status: Unutilized
Reason: Extensive deterioration

24 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21200140016, 21200220011–21200220012, 21200230005, 21200340013–21200340016, 21200420074–21200420082, 21200810003
Status: Unutilized
Reason: Extensive deterioration, Secured Area

44 Bldgs. Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21199940060, 21200540034, 21200710005–21200710009, 21200720011, 21200740007, 21200740123–21200740125, 21200820066, 21200920013, 21200920034, 21200940025, 21201030009
Status: Unutilized
Reason: Extensive Deterioration

20 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219830068, 21200710010, 21200720012, 21200740117–21200740119, 21200820065, 21200920012, 21200920033, 21200940026, 21201030008
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004, 21200520004
Status: Unutilized
Reason: Secured Area

Bldgs. 00023, 00049, 00070, Camp Merrill
Dahlonega Co: Lumpkin GA 30533
Landholding Agency: Army
Property Number: 21200520005
Status: Unutilized
Reason: Extensive deterioration

Bldgs. TR9, TR10, TR11
Catoosa Area Training Center
Tunnel Hill GA 30755
Property Number: 21201030006
Status: Excess
Reasons: Secured Area

Hawaii

54 Bldgs., Schofield Barracks
Wahiawa Co: Wahiawa HI 96786-
Landholding Agency: Army
Property Number: 219014836–219014837, 21200540035–21200540037, 21200620008–21200620010, 21200640022, 21200740010–21200740012, 21200840016, 21200920015, 21201020010, 21201030010, 21201110020
Status: Unutilized
Reason: Secured Area, (Most are extensively deteriorated)

70 Bldgs.
Kipapa Ammo Storage Site
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 21200520006, 21200620011
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs.
Wheeler Army Airfield
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 21200520008, 21200620006–21200620007, 21200630028, 21200830012, 21200940040, 21201030011, 21201110021

Status: Unutilized
Reason: Extensive deterioration

140 Bldgs., Aliamanu
Honolulu Co: HI 96818
Landholding Agency: Army
Property Number: 21200440015–21200440017, 21200620005
Status: Unutilized
Reason: Contamination (Some are in a secured area)

7 Bldgs., Kalaeloa
Kapolei HI 96707
Landholding Agency: Army
Property Number: 21200640108–21200640112
Status: Unutilized
Reasons: Extensive deterioration

6 Facilities
Tanapag USARC
Tanapag HI
Landholding Agency: Army
Property Number: 21200740008, 21200830047, 21200920035
Status: Unutilized
Reasons: Extensive deterioration

3 Bldgs., Fort Shafter
Honolulu HI 96858
Landholding Agency: Army
Property Number: 21200940039, 21201020007
Status: Unutilized
Reasons: Extensive deterioration

Idaho

Bldg. 00110, Wilder
Canyon ID 83676
Landholding Agency: Army
Property Number: 21200740134
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 00011, Edgemeade
Elmore ID 83647
Landholding Agency: Army
Property Number: 21200930009
Status: Unutilized
Reasons: Extensive deterioration

Illinois

2 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 21200140044, 21200920037
Status: Unutilized
Reason: Some are in a secured area, Some are extensively deteriorated, Some are within 2000 ft. of flammable or explosive material

15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area, Floodway, Extensive deterioration

Indiana

135 Bldgs., Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966-
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149, 219430336, 219430338, 219530079–219530093, 219740021–219740026, 219820031–219820032, 21200610013–21200610014, 21200710025, 21200820037
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

2 Bldgs.,
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 481, Jefferson Proving Ground
Madison IN 47250
Landholding Agency: Army
Property Number: 21201020008
Status: Excess
Reasons: Extensive deterioration

Iowa

201 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638-
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219740027, 21200220022, 21200230019–21200230023, 21200330012–21200330014, 21200340017, 21200420083, 21200430018, 21200440018, 21200510004–21200510006, 21200520009, 21200540038–21200540039, 21200620012, 21200710020–21200710024, 21200740126–21200740133, 21200810008
Status: Unutilized
Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material)

27 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration

Bldgs. TD010, TD020
Camp Dodge
Johnson IA 50131
Landholding Agency: Army
Property Number: 21200920036
Status: Excess
Reasons: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357-
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area

12 Bldgs.
Fort Riley
Ft. Riley Co: Riley KS 66442
Landholding Agency: Army
Property Number: 21200740135
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 21200820068, 21200840018, 21201110045
Status: Unutilized
Reasons: Extensive deterioration

Kentucky

Bldg. 126 Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511-
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511-
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

69 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121-
Landholding Agency: Army
Property Number: 21200130028–21200130029, 21200440025–21200440026, 21200510007–21200510009, 21200640023, 21200740014, 21200820070, 21200840019–21200840021, 21200930011, 21200940042
Status: Unutilized
Reason: Extensive deterioration

102 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 21200110043, 21200220029, 21200520015, 21200640028–21200640029, 21200720014–21200720024, 21200740139, 21201010007, 21201030013
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs., Blue Grass Army Depot
Richmond Co: Madison KY 40475
Landholding Agency: Army
Property Number: 21200520011, 21200830014, 21201020011, 21201030012
Status: Unutilized
Reason: Secured Area

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023-
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

215 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21200130030–21200130043, 21200530008–21200530017, 21200610016–21200610019, 21200620014, 21200640036–21200640048, 21200820002–21200820012, 21200830015–21200830016
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway)

Maryland

230 Bldgs., Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219012610, 219012638–219012640, 219012658, 219610489–219610490, 219730077, 219810076–219810112, 219820090, 219820096, 21200120059, 21200120060, 21200410017–21200410032, 21200420098–21200420100, 21200440027, 21200520021, 21200740015, 21200740141–21200740144, 21200810011–21200810018, 21200820134–21200820142, 21200840025–21200840033, 21200920016, 21200920044–21200920045, 21200940028–21200940030, 21201020012
Status: Unutilized
Reason: Most are in a secured area (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)

63 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-
Landholding Agency: Army
Property Number: 219810065, 21200140059–21200140060, 21200410014, 21200510018, 21200520020, 21200620015, 21200640049–21200640050, 21200710031, 21200740016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00211, Curtis Bay Ordnance Depot
Baltimore Co: MD 21226
Landholding Agency: Army
Property Number: 21200320024
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs. Fort Detrick
Frederick Co: MD 21702
Landholding Agency: Army
Property Number: 21200540041, 21200640113, 21200720026, 21200740140, 21200810019, 21200840023–21200840024, 21200940043, 21201030014
Status: Unutilized
Reason: Secured Area

Bldg. 0001B, Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200530018
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. SPITO, Adelphi Lab Center
Prince George MD 20783
Landholding Agency: Army
Property Number: 21201010008
Status: Unutilized
Reasons: Extensive deterioration

Massachusetts

Bldg. 3713, USAG Devens
Devens MA 01434
Landholding Agency: Army
Property Number: 21200840022
Status: Excess
Reasons: Secured Area

Michigan

Bldgs. 5755–5756, Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration

54 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062, 21200410036–21200410042, 21200540048–21200540051
Status: Unutilized
Reason: Extensive deterioration

39 Bldgs.
US Army Garrison-Selfridge
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200420093, 21200510020–21200510023
Status: Unutilized
Reason: Secured Area

4 Bldgs.
Poxin USAR Center
Southfield Co: Oakland MI 48034
Landholding Agency: Army
Property Number: 21200330026–21200330027, 21200420095
Status: Unutilized
Reason: Extensive deterioration

20 Bldgs.
Grayling Army Airfield
Grayling Co: Crawford MI 49739
Landholding Agency: Army
Property Number: 21200410034–21200410035, 21200540042–21200540047
Status: Excess
Reason: Extensive deterioration

Bldg. 001, Crabble USARC
Saginaw MI 48601–4099
Landholding Agency: Army
Property Number: 21200420094
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00714, Selfridge Air Natl Guard Base
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200440032
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Detroit Arsenal
T0209, T0216, T0246, T0247
Warren Co: Macomb MI 88397–5000
Landholding Agency: Army
Property Number: 21200520022, 21201010009
Status: Unutilized
Reason: Secured Area

Minnesota

160 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
PropertyNumber: 219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198–219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured Area, (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Missouri

131 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134, 219530136, 21199910023–21199910035, 21199920082, 21200030049, 21200820001, 21201010011–21201010015
Status: Unutilized
Reason: Secured Area, (Some are within 2000 ft. of flammable or explosive material)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area, (Some are extensively deteriorated.)

156 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430075, 21199910020–21199910021, 21200320025, 21200330028–21200330031, 21200430029, 21200530019, 21200640051–21200640052, 21200740145–21200740148, 21200830017, 21200840035–21200840037, 21200920048, 21200930012, 21200940044–21200940048, 21201010010, 21201020013, 21201110043–21201110062
Status: Unutilized, Excess
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated.)

Bldg. P4122, U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. P4074, P4072, P4073 St. Louis Ordnance Plant
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200310019
Status: Unutilized
Reason: Extensive deterioration

Bldg. 528, Weldon Springs LTA
Saint Charles MO 63304
Landholding Agency: Army
Property Number: 21200840034
Status: Unutilized
Reasons: Extensive deterioration

Montana

5 Bldgs.
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200420104, 21200740018
Status: Excess
Reasons: Secured Area, Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area

41 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643, 21200930019
Status: Underutilized
Reason: Secured Area, (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

New Jersey

322 Bldgs.
Picatinny Arsenal
Dover Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010444–219010474, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012465, 219012469, 219012475, 219012765, 00219014306, 219014311, 219014317, 219140617, 219230123, 219420006, 219530147, 219540005, 219540007, 219740113–219740127, 21199940094–21199940099, 21200130057–21200130063, 21200220063, 21200230072–21200230075, 21200330047–21200330063, 21200410043–21200410044, 21200520024–21200520039, 21200530022–21200530028, 21200620017–21200620022, 21200630001–21200630019, 21200720028, 21200720102–21200720104, 21200810020, 21200820040–21200820047, 21200840038–21200840039, 21200920017, 21200930013, 21200940031, 21201010017–21201010018, 21201020014, 21201030015, 21201110006
Status: Excess
Reason: Secured Area, (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated and in a floodway)

6 Bldgs.
Ft. Monmouth
Ft. Monmouth Co: NJ 07703
Landholding Agency: Army
Property Number: 21200430030, 21200510025–21200510027
Status: Unutilized
Reason: Extensive deterioration

200 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200410045–21200410049, 21200440034–21200440045, 21200620023, 21200810024–21200810029, 21200820048, 21200930014, 21201030016, 21201110037
Status: Excess
Reason: Secured Area

31 Bldgs.
Fort Wingate Army Depot
Gallup NM 87301
Landholding Agency: Army
Property Number: 21200920055–21200920058
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 21560 and 21562
White Sands Missile Rng.
White Sands NM 88002
Landholding Agency: Army
Property Number: 21201110059
Status: Unutilized
Reasons: Extensive deterioration

New York

Bldg. 12, Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration (Secured Area)

13 Bldgs.
Youngstown Training Site
Youngstown Co: Niagara NY 14131
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1716, 3014, 3018 U.S. Military Academy
West Point Co: NY 10996
Landholding Agency: Army
Property Number: 21200330064, 21200410050, 21200520040
Status: Unutilized
Reason: Extensive deterioration

501 Bldgs.
Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200410051, 21200420112–21200420118, 21200540057, 21200720106, 21200830048–21200830060, 21200840040–21200840043, 21200920018–21200920019, 21200930015–21200930018, 21200940001–21200940012, 21201010026–21201010030, 21201020015–21201020018, 21201030043–21201030049, 21201110048–21201110057
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Bldg. 108, Fredrick J ILL, Jr. USARC
Bullville Co: Orange NY 10915–0277
Landholding Agency: Army
Property Number: 21200510028
Status: Unutilized
Reason: Secured Area

3 Bldgs.
Kerry P. Hein USARC NY058
Shoreham Co: Suffolk NY 11778–9999
Landholding Agency: Army
Property Number: 21200510054
Status: Excess
Reason: Secured Area

8 Bldgs.
U.S. Army Garrison
Orange NY 10996
Landholding Agency: Army
Property Number: 21200810030, 21200820049, 21200840043, 21201010032
Status: Underutilized
Reason: Secured Area

Bldgs. 214, 215, 228, Fort Hamilton
Brooklyn NY 11252
Landholding Agency: Army
Property Number: 21201010031
Status: Unutilized
Reasons: Secured Area

North Carolina

621 Bldgs.
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219640074, 219710102–219710110, 219710224, 219810167, 21200410056, 21200430042, 21200440050–21200440051, 21200530029–21200530047, 21200540060, 21200610020, 21200620024–21200620039, 21200630029–21200630053, 21200640055–21200640060, 21200640114, 21200720029–21200720035, 21200740020–21200740023, 21200740154–21200740159, 21200820053–21200820057, 21200830018–21200830023, 21200840044–21200840045, 21200920049–21200920052, 21200940033, 21201010033–21201010034, 21201020019–21201020022, 21201030017, 21201110031–21201110034, 21201110050–21201110057
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs.
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219810158–219810160, 21200330032
Status: Unutilized
Reason: Secured Area

5 Bldgs.
Simmons Army Airfield
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200920053
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

North Dakota

5 Bldgs.
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army

Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration

Ohio

186 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199840069–21199840104, 21200240064, 21200420131–21200420132, 21200530051–21200530052
Status: Unutilized
Reason: Secured Area

7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

3 Bldgs
Defense Supply Center
Columbus Co: Franklin OH 43216
Landholding Agency: Army
Property Number: 21200640061, 21200820072, 21200920059
Status: Unutilized
Reasons: Secured Area

Oklahoma

Bldg. 50SA, McAlester
McAlester OK 74501
Landholding Agency: Army
Property Number: 21201110060
Status: Unutilized
Reasons: Within airport runway clear zone, Extensive deterioration

40 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219510023, 21200330065, 21200430043, 21200530053–21200530060, 21200840047, 21201010035, 21201110027
Status: Unutilized
Reason: Extensive deterioration

Bldgs. MA050, MA070, Regional Training Institute
Oklahoma City Co: OK 73111
Landholding Agency: Army
Property Number: 21200440052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. GRM03, GRM24, GRM26, GRM34, Camp Gruber Training Site
Braggs Co: OK 74423
Landholding Agency: Army
Property Number: 21200510029–21200510032
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs.
McAlester Army Ammo Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 21200740024, 21201030018
Status: Excess
Reason: Secured Area

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
PropertyNumber: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840108–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

23 Bldgs.
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219810183–219810190
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs., Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 21200830026, 21200920064, 21201020024
Status: Unutilized
Reason: Secured Area

14 Bldgs., Tobyhanna Army Depot
Tobyhanna Co: Monroe PA 18466
Landholding Agency: Army
Property Number: 21200330068, 21200820074, 21200830025, 21200920065
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs., Letterkenny Army Deport
Chambersburg Co: Franklin PA 17201
Landholding Agency: Army
Property Number: 21200920063, 21200940034
Status: Unutilized
Reasons: Secured Area

8 Bldgs., Carlisle Barracks
Cumberland Co: PA 17013
Landholding Agency: Army
Property Number: 21200640115, 21200720107, 21200740026, 21200830001, 21201020023
Status: Excess
Reason: Extensive deterioration

Bldg. 00017, Scranton Army Ammo Plant
Scranton PA 18505
Landholding Agency: Army
Property Number: 21200840048
Status: Unutilized
Reasons: Secured Area

Puerto Rico

59 Bldgs., Fort Buchanan
Guaynabo Co: PR 00934
Landholding Agency: Army
Property Number: 21200530061–21200530063, 21200610023, 21200620041, 21200830027, 21200840049, 21200920066, 212011100039–212011100041
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Samoa

Bldg. 00002, Army Reserve Center
Pago Pago AQ 96799
Landholding Agency: Army
Property Number: 21200810001
Status: Unutilized
Reason: Floodway, Secured Area

South Carolina

43 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348, 219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157, 21200520050, 21200810031, 21200920067
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Bldgs. 00038, 00039
Lewis & Clark USARC
Bismarck SD 58504
Landholding Agency: Army
Property Number: 21200710033
Status: Unutilized
Reasons: Secured Area

Tennessee

135 Bldgs., Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012328, 219012330, 219012332, 219012334, 219012337, 219013790, 219140613, 219440212–219440216, 219510025–219510027, 21200230035, 21200310040, 21200320054–21200320073, 21200340056, 21200510042, 21200530064–21200530065, 21200640069–21200640072, 21200710035, 21200740160, 21201030020–21201030024
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

22 Bldgs., Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 21200520051–21200520052, 21200740028, 21200840051, 21200920068, 21200940035, 21201020025, 21201110005
Status: Unutilized, Excess
Reason: Secured Area (Some are extensively deteriorated)

28 Bldgs., Fort Campbell
Ft. Campbell Co: Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200330100, 21200430052, 21200520061, 21200540063–21200610027, 21200840050, 21201030019, 21201030050
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00001, 00003, 00030

John Sevier Range
Knoxville TN 37918
Landholding Agency: Army
Property Number: 21200930021
Status: Excess
Reasons: Extensive deterioration

Texas

20 Bldgs., Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

154 Bldgs., Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661-
Landholding Agency: Army
Property Number: 219620827, 21200340062–21200340073
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

13 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420315–219420327
Status: Unutilized
Reason: Secured Area

240 Bldgs., Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197, 21200310044, 21200320079, 21200340059, 21200540070–21200540073, 21200640073–21200640075, 21200710036, 21200740030, 21200740161, 21200810032, 21200820013, 21200830030–21200830039, 21200840052, 21200920021–21200920023, 21200920071, 21200930022–21200930025, 21200940036, 21201030027–21201030028
Status: Unutilized
Reason: Extensive deterioration

26 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200420146, 21200720108–21200720111, 21200810033, 21200920020, 21201010036, 21201030025–21201030026
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Fort Sam Houston
Camp Bullis Co: Bexar TX
Landholding Agency: Army
Property Number: 21200520063, 21200930026
Status: Excess
Reason: Extensive deterioration

Bldg. D5040, Grand Prairie Reserve Complex
Tarrant Co: TX 75051
Landholding Agency: Army
Property Number: 21200620045
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 00002, Denton
Lewisville TX 76102
Landholding Agency: Army
Property Number: 21200810034
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs., Fort Worth
Tarrant TX 76108
Landholding Agency: Army
Property Number: 21200830028–21200830029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 25, Brownwood
Brown TX 76801
Landholding Agency: Army
Property Number: 21201020033
Status: Unutilized
Reasons: Extensive deterioration

Utah

54 Bldgs., Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 21200620046, 21200640076, 21200710037–21200710041, 21200740162–21200740165, 21200830002, 21200840053, 21201110029, 21201020032
Status: Unutilized
Reason: Secured Area

Bldg. 9307
Dugway Proving Ground
Dugway Co: Toole UT 84022-
Landholding Agency: Army
Property Number: 219013997
Status: Underutilized
Reason: Secured Area

12 Bldgs.
Camp Williams Trng. Ctr.
Riverton UT 84065
Landholding Agency: Army
Property Number: 21201110025, 212011100042
Status: Unutilized
Reasons: Extensive deterioration

15 Bldgs.
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820120–219820121, 21200610032–21200610034, 21200620047, 21200720036–21200720037, 21200820075
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 00259, 00206
Ogden Maintenance Center
Weber Co: UT 84404
Landholding Agency: Army
Property Number: 21200530066
Status: Excess
Reason: Secured Area

Virginia

500 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141-
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219220210–219220218, 219230100–219230103, 219240324, 219440219–219440225, 219510032–219510033, 219520037, 219520052, 219530194, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230038, 21200240071–21200240072, 21200510045–21200510046, 21200740031–21200740032, 21200740169–21200740171, 21200920075, 21200930028–21200930029, 21200940038, 21201010038, 21201030030–21201030039, 21201110007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area (Some are extensively deteriorated)

13 Bldgs., Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141-
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason:Within 2000 ft. of flammable or explosive material, Secured Area, Latrine, detached structure

101 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801-
Landholding Agency: Army
Property Number: 219240107, 219620866–219620876, 219740156, 219830208–219830210, 21199940130, 21200430059, 21200630064, 21200840055
Status: Unutilized
Reason: Extensive deterioration

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

138 Bldgs., Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 21200310058, 21200310060, 21200410069–21200410076, 21200430057, 21200510051, 21200740167, 21200810038, 21200820029–21200820032, 21200830041, 21200840054, 21200920072, 21200930027, 21200940037, 21201020027
Status: Unutilized
Reason: Secured Area Extensive deterioration

71 Bldgs., Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21200130076–21200130077, 21200710043–21200710049, 21200720043–21200720051, 21200810042–21200810043, 21200840056, 21201010037
Status: Unutilized
Reason: Extensive deterioration

15 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21200810035, 21200820027, 21201010044
Status: Unutilized
Reason: Extensive deterioration

58 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200220087–21200220092, 21200320080–21200320085, 21200620049–21200620052, 21200820015
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs., Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 21200310046, 21200810037, 21200830040, 21200920077
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs., Defense Supply Center
Richmond VA 23297
Landholding Agency: Army
Property Number: 21201020035–21201020036
Status: Unutilized
Reason: Secured Area

8 Bldgs. Fort Myer
Ft. Myer VA 22211
Landholding Agency: Army
Property Number: 21200810036, 21200820014, 21200830044, 21201010039
Status: Excess
Reason: Secured Area

8 Bldgs. Hampton Readiness Center
Hampton VA 23666
Landholding Agency: Army
Property Number: 21201020026
Status: Unutilized
Reasons: Extensive deterioration

Washington

747 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006, 219610009–219610010, 219610045–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820132, 21199910064–21199910078, 21199920125–21199920174, 21199930080–21199930104, 21199940134, 21200120068, 21200140072–21200140073, 21200210075, 21200220097, 21200330104–21200330106, 21200430061, 21200620053–21200620059, 21200630067–21200630069, 21200640087–21200640090, 21200740172, 21200820076, 21200840059, 21200920078, 21201010040–21201010042, 21201020029–21201020030, 21201030041–21201030042
Status: Unutilized
Reason: Secured Area

Bldg. HBC07, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: gas chamber

Bldgs. 02401, 02402
Vancouver Barracks Cemetery
Vancouver Co: WA 98661
Landholding Agency: Army
Property Number: 21200310048
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs. Renton USARC
Renton Co: WA 980058
Landholding Agency: Army
Property Number: 21200310049
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

153 Bldgs., Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142,219011144, 219011148–219011234, 219011236, 212011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

906 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219210097–219210099, 219220295–219220311, 219510065, 219510067, 219510069–219510077, 219740184–219740271, 21200020083–21200020155, 21200240074–21200240080
Status: Unutilized
Reason: (Most are in a secured area) (Most are within 2000 ft. of flammable or explosive material (Some are extensively deteriorated)

Land (by State)

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Maryland

Approx. 1 acre
Fort Meade
Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200740017
Status: Unutilized
Reasons: Other—no public access

RNWYA, Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820143
Status: Unutilized
Reason: Within airport runway clear zone

Landa/Lande
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920046–21200920047
Status: Unutilized
Reasons: Secured Area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Tennessee

Sites #1, #2, #3
Fort Campbell
Christian TN 42223
Landholding Agency: Army
Property Number: 21200920070
Status: Unutilized
Reasons: Secured Area

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Land 1, Brownwood

Brown, TX 76801
Landholding Agency: Army
Property Number: 21201020034
Status: Unutilized
Reasons: Contamination

Virginia

Site #1, Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200920076
Status: Unutilized
Reasons: Secured Area

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FEDERAL REGISTER

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Part III

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8633 of March 1, 2011

Read Across America Day, 2011

By the President of the United States of America

A Proclamation

Hidden in the pages of books are extraordinary worlds and characters that can spark creativity and imagination, and unlock the potential that lies within each of our children. Reading is the foundation upon which all other learning is built, and on Read Across America Day, we reaffirm our commitment to supporting America's next generation of great readers.

Cultivation of basic literacy skills can begin early and in the home. It is family who first instills the love of learning in our future leaders by engaging children in good reading habits and making reading a fun and interactive activity. Regardless of language or literacy level, every adult can inspire young people to appreciate the written word early in life. Parents and mentors can help build fundamental skills by reading aloud to children regularly, discussing the story, and encouraging children to ask questions on words or content they do not understand. By passing a passion for literature on to our sons and daughters, we prepare them to be lifelong, successful readers, and we provide them with an essential skill necessary for academic achievement.

Teachers also play an integral role in our students' lives, and educators can help prepare our children to meet the challenges of tomorrow by making reading a key component of classroom activities. Our Nation's young people rely on the critical thinking and analytical skills gained from reading to build other areas of knowledge, including the subjects of science, technology, engineering, and mathematics. The next generation's ability to excel in these disciplines is crucial to America's strength and prosperity in the 21st century.

Read Across America Day marks the birthday of Theodor Seuss Geisel, better known to the world as Dr. Seuss. Through amusing wordplay and engaging tales, his stories have helped generations of young Americans enjoy reading and sharpen basic reading skills, vital tools for their future success. With parents, teachers, and communities working together, we can ensure reading is a national priority and American pastime. By recommitting to improving literacy and raising the expectations we have for our students, for our schools, and for ourselves, we will win the future for our children and give every child a chance to succeed.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2, 2011, as Read Across America Day. I call upon children, families, educators, librarians, public officials, and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

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

[FR Doc. 2011–5149
Filed 3–3–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Notice of March 2, 2011

Continuation of the National Emergency With Respect to Zimbabwe

On March 6, 2003, by Executive Order 13288, the President declared a national emergency and blocked the property of persons undermining democratic processes or institutions in Zimbabwe, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). He took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. These actions and policies have contributed to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

On November 22, 2005, the President issued Executive Order 13391 to take additional steps with respect to the national emergency declared in Executive Order 13288 by ordering the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

On July 25, 2008, the President issued Executive Order 13469, which expanded the scope of the national emergency declared in Executive Order 13288 and ordered the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on March 6, 2003, and the measures adopted on that date, on November 22, 2005, and on July 25, 2008, to deal with that emergency, must continue in effect beyond March 6, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
March 2, 2011.

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H.J. Res. 44/P.L. 112–4
Further Continuing Appropriations Amendments, 2011 (Mar. 2, 2011; 125 Stat. 6)
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