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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, September 14, 2010
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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2010-0088]

Black Stem Rust; Additions of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations by adding four varieties to the list of rust-resistant *Berberis* species or cultivars in the regulations. This action will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

DATES: This rule will be effective on November 8, 2010, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before October 8, 2010. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: You may submit comments or written notice of intent to submit adverse comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0088*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0088, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0088.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. Prakash K. Hebbar, National Program Manager, Black Stem/Barberry Rust Program, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 734-5717.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by windborne spores.

The black stem rust quarantine and regulations, which are contained in 7 CFR 301.38 through 301.38-8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks. Section 301.38-2 of the regulations includes a listing of regulated articles and indicates those species and varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia* that are known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In accordance with the procedures described below under "Dates," this direct final rule will add the *B. thunbergii* cultivars 'Velglozam' (Velvet Glow™), 'Grhozam' (Green Hornet™), 'Pyruzam' (Pygmy Ruby™), and '24kagozam' (24 Karat Gold™) to the list of rust-resistant *Berberis* species in § 301.38-2(a)(1).

The addition of those species is based on recent testing to determine rust resistance conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant.

The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., six plants tested twice or three plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing the test procedure 12 times and being

determined by USDA to be rust-resistant.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on November 8, 2010, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before October 8, 2010.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This analysis provides the basis, as required by the Regulatory Flexibility Act, for certification by the APHIS Administrator that the rule will not have a significant economic impact on a substantial number of small entities.

This direct final rule will amend 7 CFR 301.38-2 by adding four varieties to the list of rust-resistant *Berberis* species or cultivars. The nursery and floriculture industries that may be affected by this rule are largely composed of small entities. We expect these entities to benefit from the rule, by being able to market interstate barberry species and cultivars that have been determined to be rust-resistant.

The introduction and spread of plant pests can result in damage to crops and losses to the U.S. agricultural sector. For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, we note that a major segment of entities potentially affected by this rule are classified within the following industries: Nursery and Tree Production (NAICS 111421), and Floriculture Production (NAICS 111422). According to the Census of Agriculture, these two categories included 52,845 farms in 2007, and represented 3 percent of all farms in the United States. These entities are considered small by SBA standards if their annual sales are $750,000 or less. Over 93 percent of the farms in these industries had annual sales of less than $500,000. Barberry plants are not one of the crops tracked by the Census and therefore data on production and number of producers are not available. Nurseries producing barberry plant species and cultivars will not be negatively affected. In fact, they will benefit from being able to market the four varieties interstate. In addition, the rule does not require any additional reporting, recordkeeping, or other compliance measures beyond what is already in place.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

■ 2. In § 301.38-2, paragraph (a)(1) is amended by adding, in alphabetical order, four rust-resistant *Berberis* species to read as follows.

§ 301.38-2 Regulated articles.

(a) * * *

(1) * * *

B. thunbergii '24kagozam' (24 Karat Gold™)

* * * * *

B. thunbergii 'Grhozam' (Green Hornet™)

* * * * *

B. thunbergii 'Pyruzam' (Pygmy Ruby™)

* * * * *

B. thunbergii 'Velglozam' (Velvet Glow™)

* * * * *

Done in Washington, DC, this 1st day of September 2010.

Gregory Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–22363 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0499; Directorate Identifier 2010–NE–06–AD; Amendment 39–16428; AD 2010–18–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH 912 F Series and 912 S Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) 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:

Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (*e.g.* due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

We are issuing this AD to prevent the pump from exceeding the fuel pressure, which could result in engine malfunction or a massive fuel leak. These conditions could cause loss of control of the airplane or a fire.

DATES: This AD becomes effective October 13, 2010.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 17, 2010 (75 FR 27487). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (*e.g.* due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

Comments

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

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 50 products of U.S. registry. We also estimate that it will take about 0.5 work-hour per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $650 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $34,625.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2010–18–14 Bombardier-Rotax GmbH (Formerly Motorenfabrik): Amendment 39–16428. Docket No. FAA–2010–0499; Directorate Identifier 2010–NE–06–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier-Rotax 912 F series and 912 S series reciprocating engines with fuel pumps, part numbers (P/Ns) 892230, 892232, 892540 (standard version) or P/Ns 892235, 892236, 892545 (version including flexible fuel line), installed. These engines are installed on, but not limited to, Diamond (formerly HOAC) HK–36R Super Dimona, Aeromot AMT–200S Super Ximango; Diamond DA20–A1 Katana; Scheibe SF 25C; Iniziative Industriali Italiane S.p.A. Sky Arrow 650 TC, and 650 TCN airplanes.

Reason

(d) 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:

Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (*e.g.* due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

We are issuing this AD to prevent the pump from exceeding the fuel pressure, which could result in engine malfunction or a massive fuel leak. These conditions could cause loss of control of the airplane or a fire.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) At the next maintenance, or within the next 25 hours of engine operation, whichever occurs first, after the effective date of this AD, remove affected fuel pumps, P/Ns 892230, 892232, 892235, 892236, 892540, or 892545.

(2) After the effective date of this AD, do not install fuel pump, P/Ns 892230, 892232, 892235, 892236, 892540, or 892545, on any engine.

FAA AD Differences

(f) This AD differs from the MCAI and/or service information as follows: The MCAI requires replacing an affected fuel pump with fuel pump, P/N 892542 or 892546. This AD requires replacement of an affected fuel pump with a fuel pump eligible for installation on the airplane.

Other FAA AD Provisions

(g) *Alternative Methods of Compliance (AMOCs):* 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

(h) Refer to MCAI AD 2007–0060R1–E, dated April 20, 2007, and Rotax Aircraft Engines Service Bulletin SB–912–053, dated April 13, 2007, for related information. Contact BRP–Rotax GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria, or go to: *http://www.rotax-aircraft-engines.com/*, for a copy of this service information.

(i) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on August 27, 2010.

Thomas A. Boudreau,

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

[FR Doc. 2010–22147 Filed 9–7–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–62821]

Delegation of Authority to the Director of Its Division of Enforcement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate authority to the Director of the Division of Enforcement, in connection with the collection of delinquent debts arising from actions to enforce the federal securities laws, to terminate collection activity or discharge debts, to accept or reject offers to compromise debts, and to accept or reject offers to enter into payment plans. This action is intended to facilitate the Commission's debt resolution process.

DATES: *Effective Date:* September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, 202–551–4936, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6553.

SUPPLEMENTARY INFORMATION: The Division of Enforcement seeks actively to collect amounts imposed in the civil actions that it files in federal district court and in administrative proceedings; these amounts represent disgorgement of ill-gotten gains from violations of the Federal securities laws and civil penalties. The Division pursues debts through further litigation, including contempt proceedings, against the debtor, and is authorized to refer delinquent debts to the U.S. Department of the Treasury for administrative collection activity, including offset of debts against amounts otherwise owed by the government to the debtor and administrative garnishment of a debtor's wages.

Based upon a debtor's financial condition, as substantiated by creditable evidence, the Commission may determine to accept a debtor's offer to pay the debt in installments, or to compromise, *i.e.,* satisfy the debt by payment of a lesser amount than the outstanding balance. In addition, when all reasonable steps have been taken to collect a debt, the Commission may authorize its staff to terminate collection activity or discharge the debt. Termination of collection activity preserves the debt as an obligation of the debtor, and does not bar future activity to collect the debt should that become practicable. Discharge of the debt is essentially a forgiveness of the debtor's obligation to pay, which may have tax consequences for the debtor. The Commission is delegating to the Director of the Division of Enforcement the authority to resolve certain debts arising from actions to enforce the federal securities laws; in particular, the Director is authorized to terminate collection activity or discharge debts, to accept offers to compromise debts (when the principal amount of the debt is $5 million or less) or to reject any offers to compromise debts, and to accept or reject offers to enter into payment plans. This delegation will improve the efficiency of the Division's debt collection program.

In any case the Division Director deems appropriate, the recommendation that a debt be resolved through termination of collection activity, discharge or by payment plan or compromise, may be submitted to the Commission for review.

Administrative Law Matters:

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act ("APA") (5 U.S.C. 553(b)(3)(A)) that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary. For the same reason, and because this amendment does not substantively affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(3)(C), are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, 5 U.S.C. 603, are not applicable. Section 23(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78w(a)(2), requires the Commission, in adopting rules under that Act, to consider the anticompetitive effects of any rules it adopts. The Commission does not believe that the amendment the Commission is adopting today will have any impact on competition. Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30–4 is amended by adding paragraph (a)(15) to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(15) With respect to debts arising from actions to enforce the federal securities laws, to terminate collection activity or discharge debts, to accept offers to compromise debts when the principal amount of the debt is $5 million or less, to reject offers to compromise debts, and to accept or reject offers to enter into payment plans.

* * * * *

By the Commission.

Dated: September 1, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–22241 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–62824; File No. S7–19–10]

RIN 3235–AK69

Temporary Registration of Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rule; Request for comments.

SUMMARY: The Commission is adopting an interim final temporary rule that establishes a means for municipal advisors, as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] ("Dodd-Frank Act"), to satisfy temporarily the requirement that they register with the Commission by October 1, 2010.

DATES: *Effective Date:* October 1, 2010 through December 31, 2011. Comments should be received on or before October 8, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interim-final-temp.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. S7–19–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–19–10. This file number should be included on the subject line if e-mail is used. To help us 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/interim-final-temp.shtml*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Martha Mahan Haines, Assistant Director and Chief, Office of Municipal Securities, at (202) 551–5681; Ira L. Brandriss, Special Counsel, Office of Market Supervision, at (202) 551–5651; Steve L. Kuan, Special Counsel, Office of Market Supervision, at (202) 551–5624; Rahman J. Harrison, Special Counsel, Office of Market Supervision, at (202) 551–5663; Steven Varholik, Special Counsel, Office of Market Supervision, at (202) 551–5615; Leigh W. Duffy, Attorney-Adviser, Office of Market Supervision, at (202) 551–2938; or any of the above at Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is adopting new Rule 15Ba2–6T [2] under the Securities Exchange Act of 1934 [3] (the "Exchange Act") as an interim final temporary rule. The rule will expire at 11:59 p.m. Eastern Time on December 31, 2011. The Commission is soliciting comments on all aspects of the interim final temporary rule. The Commission will carefully consider any comments received and intends to respond as necessary or appropriate. The Commission expects to consider a proposal for a final permanent registration program, including detailed requirements for the registration of municipal advisors, and to seek public comment on the proposal before its adoption. Persons interested in commenting on the final permanent municipal advisor registration program should submit comments to the subsequent proposal.

I. Introduction

As part of the Dodd-Frank Act, signed into law by President Obama on July 21, 2010, Congress amended Section 15B(a) of the Exchange Act [4] to, among other things, make it unlawful for municipal advisors, as defined below,[5] to provide certain advice or solicit municipal entities or certain other persons without registering with the Commission.[6] The registration requirement for municipal advisors becomes effective on October 1, 2010, meaning that municipal advisors must be registered on that date in order to continue their municipal advisory services.[7]

The Commission is today adopting, on an interim final temporary basis, new Rule 15Ba2–6T [8] under the Exchange Act, which will permit municipal advisors to temporarily satisfy the registration requirement. The adoption of Rule 15Ba2–6T serves as a transitional step to the implementation of a final permanent registration program, makes relevant information available to the public and municipal entities, and permits municipal advisors to continue their business after October 1, 2010. A municipal advisor may temporarily satisfy the statutory registration requirement by submitting certain information electronically through the Commission's public Web

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203 (2010).

[2] 17 CFR 240.15Ba2–6T.

[3] 15 U.S.C. 78a *et seq.*

[4] 15 U.S.C. 78*o*–4(a). All references in this Release to the Exchange Act refer to the Exchange Act as amended by the Dodd-Frank Act.

[5] *See infra* Section II.A.

[6] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

[7] *See* Section 975(i) of the Dodd-Frank Act.

[8] 17 CFR 240.15Ba2–6T.

site on new Form MA–T, which is designed for this purpose.[9]

Because entry of information into Form MA–T will require establishing an account and securing access credentials (username and password) as explained in more detail below, municipal advisors are advised to allow ample time to establish an account and obtain such credentials and complete the form before October 1, 2010.[10] The form and instructions for requesting access credentials will be accessible through a link located on the Commission's Web site, *http://www.sec.gov,* beginning on or about September 1, 2010.

II. Discussion

Section 15B(a)(1) of the Exchange Act, as amended by Section 975(a)(1)(B) of the Dodd-Frank Act, makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission.[11] Section 15B(a)(2) of the Exchange Act, as amended by Section 975(a)(2) of the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

The Commission is adopting an interim final temporary rule, Rule 15Ba2–6T, in order to provide a method for municipal advisors to temporarily satisfy the statutory registration requirement of Section 15B(a)(1) of the Exchange Act (as amended by Section 975(a)(1) of the Dodd-Frank Act) until the Commission has promulgated a final permanent registration program. The interim final temporary rule will expire on December 31, 2011.

As described in detail below, Form MA–T will require a municipal advisor to indicate the purpose for which it is submitting the form (*i.e.,* initial application for, or amendment or withdrawal of temporary registration), provide certain basic identifying and contact information concerning its business, indicate the nature of its municipal advisory activities, and supply information about its disciplinary history and the disciplinary history of its associated municipal advisor professionals. The Commission carefully considered alternatives to the adoption of an interim final temporary rule before deciding to adopt Rule 15Ba2–6T. It considered, for example, whether it would be preferable to issue a broad-based exemption from the Dodd-Frank Act's registration requirement [12] in order to allow the Commission time to consider a final permanent registration program before municipal advisors would be required to submit any registration form. In light of the October 1, 2010 effective date that Congress set for Section 975 of the Dodd-Frank Act, delaying implementation of any registration for municipal advisors and not accommodating temporary registration would not appear to achieve the purposes intended by Congress in selecting an October 1, 2010 registration date.

The Commission also considered and weighed the relative costs and benefits of requiring disciplinary information in the context of the temporary registration contemplated by Form MA–T. The Commission has determined to require disclosure of disciplinary information on Form MA–T because of the value it will have for the Commission's oversight of municipal advisors and their activities in the municipal securities market, and because of the importance of such disciplinary information to investors, issuers and others in choosing a municipal advisor, engaging in transactions with a municipal advisor, or participating in transactions in municipal securities issued in offerings for which a municipal advisor provided municipal advisory services.

The Commission believes that providing a temporary registration process for municipal advisors, pursuant to an interim final temporary rule effective on October 1, 2010, is a necessary and appropriate way to proceed, is consistent with the intent of Congress in enacting Section 975, and is a tailored way to provide investors and municipal entities with basic and important information quickly while the Commission considers a permanent registration program. The Commission requests comment generally on the decision to require temporary registration on Form MA–T and the specific information required to be reported on the form. The Commission also requests comment on the Commission's determinations discussed above and on whether there are alternatives not discussed above that the Commission should consider.

A. Definition of Municipal Advisor

Section 15B(e) of the Exchange Act, as amended by Section 975(e) of the Dodd-Frank Act, defines the term "municipal advisor" to mean a person (who is not a municipal entity or an employee of a municipal entity) (1) that provides advice to or on behalf of a municipal entity [13] or obligated person [14] with respect to municipal financial products [15] or the issuance of municipal securities,[16] including advice with

[9] 17 CFR 249.1300T. A municipal advisor that completes the temporary registration form and receives confirmation from the Commission that the form was filed will be temporarily registered for purposes of Section 15B. *See also infra* notes 47–48 and accompanying text.

[10] In order to establish an account and obtain access credentials with the temporary registration system for Form MA–T on the Commission's secure Web site, a submitter will need to fill out general user information fields such as name, address, phone number, e-mail address, organization name and employer identification number, and user account information (*i.e.,* username and password), and to select and answer a security question. Once accepted by the temporary registration system, the submitter will receive an e-mail notification that the account has been established and the submitter will be able to access and complete Form MA–T. The Commission staff anticipates that submitters will ordinarily obtain access credentials the same day that they are requested. However, to avoid the possibility of delay, all municipal advisors are encouraged to allow ample time to establish an account and obtain access credentials and complete Form MA–T by October 1, 2010.

[11] For definitions of the terms "municipal entity," "obligated person," "municipal financial product," and "solicitation of a municipal entity or obligated person," *see infra,* notes 13–17.

[12] *See* Section 15B(a)(4) of the Exchange Act, as amended by Section 975(a)(4) of the Dodd-Frank Act.

[13] "Municipal entity" is defined to mean any State, political subdivision of a State, or municipal corporate instrumentality of a State, including: Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and any other issuer of municipal securities. *See* Section 15B(e) of the Exchange Act, as amended by Section 975(e) of the Dodd-Frank Act.

[14] "Obligated person" is defined to mean any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities. *See id.*

[15] "Municipal financial product" is defined to mean municipal derivatives, guaranteed investment contracts, and investment strategies. "Investment strategies" includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments. *See id.*

[16] The statute specifically includes within the meaning of municipal advisor, someone who provides advice with respect to the structure, timing, terms, and other similar matters concerning municipal financial products or issues. *See id.*

respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (2) that undertakes a solicitation [17] of a municipal entity. The definition specifically includes "financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors" that provide municipal advisory services.[18] The definition of "municipal advisor" explicitly excludes a broker, dealer, or municipal securities dealer serving as an underwriter,[19] as well as attorneys offering legal advice or providing services that are of a traditional legal nature and engineers providing engineering advice are also excluded.[20]

The Dodd-Frank Act also excludes from the definition "any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice." [21] The Commission interprets this exclusion to mean that a registered investment adviser or an associated person of a registered investment adviser is excluded from the definition of "municipal advisor" if the investment adviser or associated person of the adviser provides municipal advisory services, so long as those services are investment advice for purposes of the Investment Advisers Act. A registered investment adviser or an associated person of a registered investment adviser must register with the Commission as a municipal advisor if the adviser or associated person of an adviser provides any municipal advisory services other than investment advice within the meaning of the Investment Advisers Act.[22]

The Commission similarly interprets the exclusion in the Dodd-Frank Act of "any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps." Accordingly, a commodity trading advisor or any person associated with a commodity trading advisor is excluded from the definition of "municipal advisor" if the commodity trading advisor or associated person of the commodity trading advisor provides municipal advisory services, so long as those services are advice related to swaps. A commodity trading advisor or an associated person of a commodity trading advisor must register with the Commission as a municipal advisor if the commodity trading advisor or an associated person of a commodity trading advisor provides any municipal advisory services that are not advice related to swaps.

B. Temporary Registration on Form MA–T

Pursuant to new Rule 15Ba2–6T, as of October 1, 2010, in order temporarily to satisfy the new registration requirement for municipal advisors, and thereby legally be permitted to perform, or continue to perform, municipal advisory services, a municipal advisor will need to have completed and submitted new Form MA–T through the Commission's Web site at *http://www.sec.gov* by October 1, 2010. Because entry of information into Form MA–T will require the securing of access credentials, as explained in more detail below, municipal advisors are advised to allow ample time to establish an account and obtain access credentials (username and password) and complete the form by October 1, 2010. Form MA–T will require a municipal advisor to indicate the purpose for which it is submitting the form (*i.e.,* initial temporary registration, amendment to temporary registration, or withdrawal from temporary registration), provide certain basic identifying and contact information concerning its business, indicate the nature of its municipal advisory activities, and supply information about its disciplinary history and the disciplinary history of its associated municipal advisor professionals.[23]

More specifically, the information to be supplied will include:

Basic Information

1. *Purpose for submission of Form MA–T.* A municipal advisor must indicate whether it is submitting the form for initial temporary registration as a municipal advisor, is submitting an amendment to a temporary registration as a municipal advisor, or is submitting a withdrawal from temporary registration as a municipal advisor. If the municipal advisor is submitting an amendment or withdrawing from temporary registration, it will also be necessary to provide the Municipal Advisor Registration Number assigned to the municipal advisor at the time of its initial temporary registration. This information is needed in order to determine the purpose for which Form MA–T is being submitted and to appropriately cross-reference amendments and withdrawals to the original temporary registration. The inclusion of these items will allow the same form, Form MA–T, to be used for multiple purposes: Initial temporary registration, amendments to temporary registrations and withdrawals from temporary registration.

The Commission seeks comment on the use of Form MA–T for these three purposes, whether use of the same form for multiple purposes may be confusing for registrants, and whether it would be preferable to have a separate form for each of these purposes. Will these requirements be confusing or otherwise difficult for a municipal advisor to comply with?

2. *Identifying and contact information.* A municipal advisor must indicate the full legal name of the municipal advisor and, if different, the name under which it conducts its business, the address of its principal office and place of business, the telephone number and the facsimile number, if any, at that location, and its

[17] "Solicitation of a municipal entity or obligated person" is defined to mean a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in Section 202 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity. *See id.*

[18] These entities, however, are only included if they provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities (including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues) or undertake a solicitation of a municipal entity. *See* Section 975(e) of the Dodd-Frank Act. The term "municipal advisory services" as used herein means advice with respect to municipal financial products, the issuance of municipal securities, and the solicitation of a municipal entity.

[19] The term "underwriter" is defined in Section 2(a)(11) of the Securities Act of 1933. 15 U.S.C. 77b(a)(11). A broker, dealer or municipal securities dealer who provides municipal advisory services while acting in a capacity other than as an underwriter would, however, be a municipal advisor.

[20] *Id.*

[21] *See* Section 975(e) of the Dodd-Frank Act.

[22] The Commission believes that such interpretation is in furtherance of the goals of the Dodd-Frank Act to regulate municipal advisors, a category of persons previously unregulated.

[23] Every temporary registration and each amendment to a temporary registration or withdrawal from temporary registration filed pursuant to the rule shall constitute a "report" within the meaning of Sections 15B(c), 17(a), 18(a) and 32(a) and other applicable provisions of the Exchange Act. *See* Rule 15Ba2–6T(c). As a consequence, it would be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to State a material fact in the Form MA–T.

general e-mail address and Web site, if any. In addition, the municipal advisor must supply its mailing address, if it is different from its principal office and place of business, as well as the name and title of a person whom the municipal advisor has authorized to receive information and respond to questions about the registration (the "contact person") and the address, telephone number and facsimile number, if any, and e-mail address, if any, of the contact person.

The Commission is requesting this identifying and contact information to determine whether a particular municipal advisor has submitted a temporary registration, to contact a person at the municipal advisor if Commission staff have any questions or wish to arrange for an inspection, and to send information to the municipal advisor.

The Commission requests comment concerning the appropriateness of requiring this identifying and contact information, including whether additional information should be required or whether different information would be better suited for this purpose. In particular, might it be confusing or otherwise difficult for a municipal advisor to supply this information?

3. *Other regulatory identifying information.* Form MA–T also requires a municipal advisor to provide its Employer Identification Number (used with respect to Internal Revenue Service matters), but not—in the case of a sole proprietor, for example—a Social Security Number. If the municipal advisor is also registered with the Commission as an investment adviser, broker, dealer, or municipal securities dealer, it will be required to provide its related SEC file number or numbers. In addition, if the municipal advisor has a number (a "CRD Number") assigned to it either under the Financial Industry Regulatory Authority's ("FINRA") Central Registration Depositary ("CRD") system or the Investment Adviser Registration Depository ("IARD") system, it will be required to provide its CRD Number.

The Commission seeks this information to more effectively cross-reference those entities registered as municipal advisors to those who are registered as brokers, dealers, municipal securities dealers or investment advisers. This ability to cross-reference will allow the Commission to assemble more complete information concerning a municipal advisor who is also registered as a broker, dealer, municipal securities dealer or investment adviser and to plan for and carry out efficient and effective examinations of such entities.[24] In addition, by obtaining all of a registrant's regulatory file numbers, the Commission will be able to cross-reference disciplinary information that is submitted to the CRD or IARD systems with that submitted on Form MA–T.

The Commission seeks comment concerning the requirement to supply SEC file numbers and CRD Numbers. Will this requirement be confusing or otherwise difficult for a municipal advisor to comply with? Would the use of other identifying numbers be more useful or appropriate or should no identifying numbers be required?

Nature of Municipal Advisory Activities

Form MA–T requires the municipal advisor to indicate the general types of municipal advisory services that it provides. The following eight activities are listed, together with a checkbox for each: (1) Advice concerning the issuance of municipal securities, (2) advice concerning the investment of the proceeds of municipal securities, (3) advice concerning guaranteed investment contracts, (4) recommendation and/or brokerage of municipal escrow investments, (5) advice concerning the use of municipal derivatives (*e.g.,* swaps), (6) solicitation of business from a municipal entity or obligated person for an unaffiliated person or firm (*e.g.,* third party marketers, placement agents, solicitors and finders), (7) preparation of feasibility studies, tax or revenue projections, or similar products in connection with offerings or potential offerings of municipal securities, and (8) other. Registrants who check "other" activities will be required to provide a narrative description of such activities. Activities one to six above are derived from the definition of municipal advisor in the Dodd-Frank Act.[25] Activity number seven above (the preparation of feasibility studies, tax or revenue projections, or similar products in connection with offerings or potential offerings of municipal securities) was included because these services are sometimes provided by financial advisors (some of whom may be municipal advisors) to municipal entities. This information, together with information under item eight (other), will assist the Commission in understanding the scope of activities in which a municipal advisor engages.

The Commission is seeking this information in order to better understand the activities of municipal advisors. This information is necessary to understand the basis for registration and will assist Commission staff to better plan and prepare for inspections and examinations[26] of municipal advisors.

The Commission seeks comment concerning the requirement for a municipal advisor to supply information in Form MA–T concerning the general types of municipal advisory services it provides. In particular, will it be confusing or otherwise difficult for a municipal advisor to provide this information? Are the categories of municipal advisory services appropriate or should additional or other categories be included? Are there considerations relating to the business of municipal advisors, or of some types of municipal advisors, that the Commission may not have taken into account in connection with this list of municipal advisory services?

Disciplinary Matters

Section 975 of the Dodd-Frank Act amended section 15B of the Exchange Act to direct the Commission, by order, to censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal advisor, if it finds[27] that such municipal advisor has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A),[28] (D),[29] (E),[30] (H),[31] or (G)[32] of paragraph (4) of section 15(b) of the Exchange Act; has been convicted of any offense specified Section 15(b)(4)(B)[33] of the Exchange Act within ten years of the commencement of the proceedings under section 15(c); or is enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C)[34] of the Exchange Act.[35] Item 3 of Form MA–T includes questions intended to solicit information from a municipal advisor concerning any of its activities or

[24] *See* 15 U.S.C. 78*o*–4(c)(7).

[25] *See* Section 15B(e)(4) of the Exchange Act as added by Section 975(e)(4) of the Dodd-Frank Act.

[26] *See* Section 17(a)(1) of the Exchange Act, as amended by Section 975(h) of the Dodd-Frank Act.

[27] Such findings must be on the record after notice and opportunity for hearing and include a finding that the particular disciplinary action is in the public interest. *See* Section 15B(c)(2) of the Exchange Act, as amended by Section 975(c)(3) of the Dodd-Frank Act. *See also* 17 CFR 201.

[28] *See* 15 U.S.C. 78*o*(b)(4)(A).

[29] *See* 15 U.S.C. 78*o*(b)(4)(D).

[30] *See* 15 U.S.C. 78*o*(b)(4)(E).

[31] *See* 15 U.S.C. 78*o*(b)(4)(H).

[32] *See* 15 U.S.C. 78*o*(b)(4)(G).

[33] *See* 15 U.S.C. 78*o*(b)(4)(B).

[34] *See* 15 U.S.C. 78*o*(b)(4)(C).

[35] The Commission has the same authority with respect to municipal securities dealers. *See* 15 U.S.C. 78*o*–4(c).

activities of certain of its associated persons that could subject the municipal advisor to disciplinary actions by the Commission under such subparagraphs of Section 15(b)(4) of the Exchange Act.

In addition to its value generally for the Commission's oversight of the municipal securities markets, the Commission seeks this information because it may indicate that a municipal advisor could be statutorily disqualified from acting as a municipal advisor.[36] In addition, the Commission wishes to make this important information available to municipal entities and obligated persons who engage municipal advisors and to investors who may purchase securities from offerings in which municipal advisors participated.

The disciplinary information to be disclosed is substantially similar to the information required to be disclosed in Form BD for broker-dealers.[37] Specifically, Form MA–T asks questions concerning the disciplinary history of the municipal advisor and of its associated municipal advisor professionals. The Commission defines the term "associated municipal advisor professional" in the glossary section of Form MA–T to mean: (A) Any associated person of a municipal advisor primarily engaged in municipal advisory activities; (B) any associated person of a municipal advisor who is engaged in the solicitation of municipal entities or obligated persons; (C) any associated person who is a supervisor of any persons described in subparagraphs (A) or (B); (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, the Chief Executive Officer or similarly situated official designated as responsible for the day-to-day conduct of the municipal advisor's municipal advisory activities; and (E) any associated person who is a member of the executive or management committee of the municipal advisor or a similarly situated official, if any; and excludes any associated person whose functions are solely clerical or ministerial. The definition of associated municipal finance professional is derived from the definition of "municipal finance professional" set forth in Rule G–37 of the Municipal Securities Rulemaking Board.

The Commission has chosen to limit this inquiry to a subgroup (associated municipal advisor professionals) for purposes of temporary registration in order to obtain information about those associated persons[38] who are closely associated with an advisor's municipal advisory activities, *i.e.,* those who are primarily engaged in an advisor's municipal advisory activities, have supervisory responsibilities over those primarily engaged in municipal advisory activities, are engaged in day-to-day management of the conduct of an advisor's municipal advisory activities, or are responsible for executive management of the advisor. The Commission believes this is an appropriate definition to use for purposes of temporary registration because it will allow the Commission to obtain, and municipal entities, obligated persons and investors to have access to, information about those persons who may be most relevant to an advisor's municipal advisory services, while excluding information about persons at a firm whose activities may have less bearing on the provision of such services.

The Commission seeks comment concerning whether this limitation is appropriate, whether it excludes persons whose disciplinary history may be relevant to a municipal advisor's activities, or whether it includes persons whose disciplinary history is not sufficiently relevant to a municipal advisor's activities to warrant disclosure. In addition, the Commission solicits specific suggestions as to how the disclosure regarding associated persons whose actions are covered by Item 3 of Form MA–T might be improved for purposes of a permanent registration program or whether the current limitation to associated municipal advisory professionals is suitable.

In addition, the Commission notes that the time-period limits for disclosure on Form MA–T are consistent with the disclosure reporting requirements on Form BD, adopted pursuant to Section 15(b)(4) of the Exchange Act. Specifically, with respect to felonies and misdemeanors involving investments or an investment-related business, Form MA–T requires disclosures of matters within the last ten years. With respect to whether the municipal advisor or any associated municipal advisor professional was enjoined by any domestic or foreign court in connection with any investment-related activity, Form MA–T similarly requires disclosures of matters within the last ten years. Disclosure is also required concerning any orders entered against the municipal advisor or any associated municipal advisor professional by any Federal or State regulatory agency other than the SEC and Commodity Futures Trading Commission ("CFTC")[39] or by any foreign financial regulatory authority within the last ten years.

With respect to all other matters identified on Form MA–T (including Federal, State, and foreign regulatory actions and actions taken by self-regulatory organizations), no time limit is placed on disclosure. The Commission believes that it is important to collect information about matters within these timeframes because, under the Exchange Act, the Commission could use such matters to form the basis for an action to suspend or revoke a municipal advisor's registration.[40]

The Commission seeks comment concerning these timeframes in connection with temporary registration of municipal advisors. Would the public and municipal entities find the full history of disciplinary information important and useful? Are these timeframes too long, such that they require disclosure of information that is no longer useful, or such that they impose an undue burden on applicants for temporary registration?

More specifically, Form MA–T asks the following, which are, in substance, the same as the disciplinary questions asked in Form BD:

1. Whether, in the past ten years, the municipal advisor or any associated municipal advisor professional has been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony or been charged[41] with any felony?

2. Whether in the past ten years, the municipal advisor or any associated municipal advisor professional has been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a misdemeanor involving: Investments or an investment-related business, or any fraud, false statements, or omissions,

[36] *See id.*

[37] 17 CFR 249.501.

[38] Section 15B(e)(7) of the Exchange Act, added by Section 975(e) of the Dodd-Frank Act, defines "associated person of a municipal advisor" as any partner, officer, director, or branch manager of a municipal advisor (or any person occupying a similar status or performing similar functions); any other employee of a municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and any person directly or indirectly controlling, controlled by, or under common control with a municipal advisor, or an employee of a municipal advisor.

[39] With regard to the orders entered by SEC and CFTC, no time limit is placed on disclosure. *See infra* Item 3(d).

[40] *See* Section 15B(c)(2) of the Exchange Act.

[41] The Commission notes that a municipal advisor only needs to report charges that are currently pending.

wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses or has been charged [42] with a misdemeanor involving such actions?

3. Whether the SEC or the CFTC has ever: (a) Found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission, (b) found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of its regulations or statutes, (c) found the municipal advisor or any associated municipal advisor professional to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted, (d) entered an order against the municipal advisor or any associated municipal advisor professional in connection with investment-related activity, or (e) imposed a civil money penalty on the municipal advisor or any associated municipal advisor professional, or ordered the municipal advisor or any associated municipal advisor professional to cease and desist from any activity.

4. Whether any other Federal regulatory agency, any State regulatory agency, or any foreign financial regulatory authority has (a) Ever found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission, or been dishonest, unfair, or unethical, (b) ever found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of investment-related regulations or statutes, (c) ever found the municipal advisor or any associated municipal advisor professional to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted, (d) in the past ten years, entered an order against the municipal advisor or any associated municipal advisor professional in connection with an investment-related activity, or (e) ever denied, suspended, or revoked the municipal advisor's or any associated municipal advisor professional's registration or license, or otherwise prevented the municipal advisor or any associated municipal advisor professional, by order, from associating with an investment-related business or restricted the municipal advisor's or any associated municipal advisor professional's activity.

[42] The Commission notes that a municipal advisor only needs to report charges that are currently pending.

5. Whether any self-regulatory organization or commodities exchange has ever (a) found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission, (b) found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the SEC), (c) found the municipal advisor or any associated municipal advisor professional to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted, or (d) disciplined the municipal advisor or any associated municipal advisor professional by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities.

6. Whether the municipal advisor's or any associated municipal advisor professional's authorization to act as an attorney, accountant, or Federal contractor has ever been revoked or suspended.

7. Whether the municipal advisor or any associated municipal advisor professional is now the subject of any regulatory proceeding that could result in a "yes" answer to any part of the questions described in 3, 4 or 5 above.

8. Whether any domestic or foreign court has: (a) In the last ten years, enjoined the municipal advisor or any associated municipal advisor professional in connection with any investment-related activity, (b) ever found that the municipal advisor or any associated municipal advisor professional was involved in a violation of investment-related statutes or regulations, or (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil action brought against the municipal advisor or any associated municipal advisor professional by a State or foreign financial regulatory authority?

9. Whether the municipal advisor or any associated municipal advisor professional is now the subject of any civil proceeding that could result in a "yes" answer to any part of question 8 above.

If a municipal advisor answers "yes" to any of these questions, a text box will require a brief narrative of the event or a cross-reference to disclosure of the event made through the broker-dealer or investment advisor public disclosure systems.

The Commission requests comments on all aspects of these disciplinary questions, including their appropriateness and adequacy, whether there are additional or other questions that should be included, and whether they will impose an excessive burden on municipal advisors to answer. In addition, the Commission requests comment concerning whether including the disciplinary questions in Form MA–T will impose undue hardship on, or have other consequences for, small municipal advisors. Furthermore, comment is solicited as to whether the ability to cross-reference to disciplinary disclosures on Form BD and Form ADV for investment advisers [43] will make it more difficult for municipal entities, obligated persons, investors and others to obtain this information than if it were included in Form MA–T itself. In addition, will the ability of municipal advisors to cross-reference such disclosures on Forms BD and ADV significantly reduce the burden on municipal advisors, and particularly small advisors, to complete Form MA–T?

Execution

With respect to execution of Form MA–T, the person who signs the form will be required to depose and say that he or she has executed the form on behalf of the municipal advisor and with its authority. With this execution, both the person who signs the form and the municipal advisor must represent that the information and statements made in Form MA–T are current, true and complete. The municipal advisor also will be required to consent to service of any civil action or notice of any proceeding before the Commission or self-regulatory organization regarding its advisory services via registered or certified mail to its named contact person. This is consistent with the execution provisions of Forms BD and ADV, but deletes references to State registration, bonding requirements and other inapplicable components.

The individual who signs the Form MA–T depends upon the form of organization of the municipal advisor:

- For a sole proprietorship, the sole proprietor should sign.
- For a partnership, a general partner should sign.
- For a corporation, an authorized principal officer should sign.
- For all others, an authorized individual who participates in managing or directing the municipal advisor's affairs should sign.

The Commission requests comment concerning the representations required of a person who executes Form MA–T,

[43] 17 CFR 279.1.

such as whether there should be additional or alternative representations. In addition, the Commission solicits comment regarding the requirement that the municipal advisor submit to service of process in the manner described. Would there be alternative methods to obtain such consent or should such consent not be obtained?

Amendment, Withdrawal, and Rescission

Rule 15Ba2–6T requires that a municipal advisor promptly amend Sections 1 or 3 of Form MA–T if the information therein becomes inaccurate in any way and whenever a municipal advisor wishes to withdraw from registration. A municipal advisor can amend its Form MA–T on the Commission's Web site by accessing Form MA–T and checking the box in Item 1 for an amendment and providing updated information in the relevant sections of the form. Similarly, a municipal advisor can withdraw its registration by accessing Form MA–T on the Commission's Web site and by checking the box for withdrawal on the form. In addition, pursuant to Rule 15Ba2–6T, the Commission may rescind a municipal advisors' temporary registration following notice and hearing in accordance with the Commission's Rules of Practice.[44]

Instructions and Glossary

Form MA–T includes a set of instructions for its proper completion and submission, and a glossary of terms intended, in part, to help participants in the municipal securities industry in determining whether they are municipal advisors and thus required to register. These instructions and glossary are attached to this release, together with Form MA–T. The definitions in the glossary (except for the definition of associated municipal advisor professional discussed above[45]) are derived from Form ADV and the terms in the Exchange Act, including Section 975(e) of the Dodd-Frank Act.[46] The instructions are intended to answer basic questions concerning completion of the form. Comments are requested on all aspects of the form, instructions and glossary. For example, comments are solicited concerning whether the definitions and instructions are clear and useful to a submitter and how they might be improved. In addition, comments are solicited concerning whether additional instructions or definitions would be useful.

Timing Issues

As noted above, current municipal advisors are required by statute to register with the Commission by October 1, 2010. Municipal advisors are advised to allow ample time to establish an account and obtain access credentials (username and password) and complete the on-line version of Form MA–T by the statutory deadline.

In order to establish an account and obtain access credentials to the temporary registration system for filing Form MA–T on the Commission's secure Web site, a submitter will need to fill out general user information fields such as name, address, phone number, e-mail address, organization name and employer identification number, and user account information (*i.e.,* username and password), and to select and answer a security question. Once accepted by the temporary registration system, the submitter will receive an e-mail notification that the account has been established and the submitter will be able to access and complete Form MA–T. The Commission anticipates that submitters will ordinarily obtain access credentials the same day that they are requested. To avoid the possibility of delay, municipal advisors are encouraged to allow ample time to establish an account and obtain access credentials and submit Form MA–T before October 1, 2010.

Form MA–T will be accessible through a link located on the Commission's Web site, *http://www.sec.gov,* beginning on or about September 1, 2010, at which time municipal advisors will be able to submit forms for temporary registration and to amend and withdraw such registrations through the Commission's Web site. Each Form MA–T, including each amendment to a temporary registration or withdrawal from temporary registration, is considered filed with the Commission upon its completion on the Commission Web page established for that purpose and the Commission has sent confirmation that the form was filed to the municipal advisor.

A municipal advisor that completes the temporary registration form and receives confirmation from the Commission that the form was filed will be temporarily registered for purposes of Section 15B[47] until the earlier of: (1) The date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose;[48] (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) the expiration of the interim final temporary rule on December 31, 2011. Comment is requested concerning the December 31, 2011 expiration date; would an earlier or later date be more appropriate?

III. Other Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register.**[49] This requirement does not apply, however, if the agency "for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."[50] Further, the Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[51] This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[52] The Commission finds, for good cause, that notice and solicitation of comment before adopting the new rules are impracticable, unnecessary, or contrary to the public interest.

For the reasons discussed throughout this release, the Commission finds good cause to act immediately to adopt these rules on an interim final temporary basis. The Dodd-Frank Act amended Section 15B(a)(2) of the Exchange Act to

[44] *See supra* note 23.

[45] *See supra* text accompanying notes 37–38.

[46] The following definitions in the glossary were taken from Form ADV (17 CFR 279.1): "Affiliate," "Charged," "Control," "Employee," "Enjoined," "Felony," "FINRA CRD or CRD," "Foreign Financial Regulatory Authority," "Found," "Investment-Related," "Involved," "Minor Rule Violation," "Misdemeanor," "Order," "Person," "Principal Place of Business or Principal Office and Place of Business," "Proceeding," "Related Person," and "Self-Regulatory Organization or SRO." The Commission believes that it is appropriate to conform the definitions for these terms in Form MA–T to the definitions used in Form ADV because the information sought will be used for similar purposes. In addition, inconsistency in the definitions could create unnecessary uncertainty and confusion for municipal advisors, some of whom also must file Form ADV. The following definitions in the glossary were taken from the Section 975(e) of the Dodd-Frank Act: "Associated Person of a Municipal Advisor," "Guaranteed Investment Contract," "Investment Strategies," "Municipal Advisor," "Municipal Entity," "Municipal Financial Product," "Obligated Person," and "Solicitation of a Municipal Entity or Obligated Person." "IARD" is a FINRA definition. *See supra* text accompanying notes 37–38 for the definition of "associated municipal advisor professional."

[47] *See supra* note 9.

[48] Approval of a municipal advisor's registration under the final permanent rule will replace and supersede a temporary registration.

[49] *See* 5 U.S.C. 553(b).

[50] *See id.*

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

[52] *See id.*

provide that, effective on October 1, 2010, "[i]t shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered * * *" with the Commission.[53] The Commission is adopting an interim final temporary rule in order to allow municipal advisors temporarily to satisfy the registration requirement in order that they may continue to act as municipal advisors on and after October 1, 2010. Absent such means to register, municipal advisors would likely have to cease providing all municipal advisory services, which may have a significant adverse impact on their businesses and on municipal entities and obligated persons engaged in issuing municipal securities or other activities for which they obtain the advice of a municipal advisor. Some municipal entities and obligated persons do not access the capital markets frequently and depend heavily on their municipal advisors in connection with offerings of municipal securities. In addition, some municipal entities and obligated persons, such as large or frequent issuers, often have complex financial plans and large borrowing needs and use municipal advisors to supply independent, expert advice concerning long term financial planning and the use of swaps and other sophisticated financial products. The interim final temporary rule is designed to provide a method by which municipal advisors may continue to provide municipal advisory services to municipal entities and obligated persons without violating Section 15B(a)(2) of the Exchange Act.

The Commission is requesting comments on the interim final temporary rule and will carefully consider any comments received and respond to them as necessary or appropriate. The interim final temporary rule will expire on December 31, 2011. Setting a termination date for the interim final temporary rule will necessitate further Commission action no later than the end of that period. The Commission finds that there is good cause to have the rule effective as an interim final temporary rule on October 1, 2010, and that notice and public procedure in advance of effectiveness of the interim final temporary rule are impracticable, unnecessary and contrary to the public interest.[54]

[53] *See* Section 975(a) of the Dodd-Frank Act.

IV. Paperwork Reduction Act

A. Background

Rule 15Ba2–6T and Form MA–T contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act" or "PRA").[55] The title for the collection of information is "Temporary Registration of Municipal Advisors—Form MA–T" and the OMB control number for the collection of information is 3235–0659.

The Commission has submitted these requirements to the Office of Management and Budget ("OMB") for review and approval in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. Separately, the Commission has submitted the collection of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved the collection of information related to Form MA–T on an emergency basis with an expiration date of March 31, 2011.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. As discussed above, Section 15B of the Exchange Act, as amended by the Dodd-Frank Act, requires municipal advisors (as defined in Section 975 of the Dodd-Frank Act) to register with the Commission by October 1, 2010.[56] As a transitional step to the implementation of a final permanent registration program, the Commission is today adopting, on an interim final basis, new Rule 15Ba2–6T, which will permit municipal advisors to temporarily satisfy the registration requirement.

Rule 15Ba2–6T and Form MA–T will require a municipal advisor to:

- Provide, in Item 1 of Form MA–T, basic identifying information, including name; address; telephone number; e-mail address; fax number and Web site address, if any; and Employer Identification Number (but not Social Security Number, in the case, for example, of a sole proprietor). If the municipal advisor is also registered with the Commission as an investment adviser, broker, dealer, or municipal securities dealer, it will be required to provide its Commission file number(s), and will be required to provide its CRD number under FINRA's CRD system or under IARD, if it has one;
- Indicate, in Item 2 of Form MA–T, what type of municipal advisory services it provides by checking one or more of seven activities listed on Form MA–T and/or by describing any other activities; and
- Answer "Yes" or "No" in Item 3 of Form MA–T to approximately 24 questions concerning any convictions of—or any guilty or *nolo contendere* pleas by—the municipal advisor or any of its associated municipal advisor professionals in a felony case over the last ten years, and any pending felony charges. It will also ask for information regarding the municipal advisor or any of its associated municipal advisor professionals concerning any convictions, guilty or *nolo contendere* pleas, or pending charges with respect to a misdemeanor or conspiracy to commit an offense involving investments or investment-related business, fraud, false statements, omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion during the last ten years. Form MA–T will similarly require disclosure of disciplinary sanctions imposed by the Commission, the Commodity Futures Trading Commission, and other Federal, State, or foreign regulatory authorities, or by self-regulatory agencies, organizations and commodity exchanges. In addition, it will inquire about injunctions issued by domestic or foreign courts in connection with investment-related activities, adverse findings by such courts concerning investment-related statutes or regulations and pending civil proceedings that could result in an injunction or finding.

On the execution page of Form MA–T, the municipal advisor will be required to consent to service of any civil action brought by, or notice of proceeding before the Commission or SRO in connection with its municipal advisory services via registered or certified mail or confirm telegram to its contact person. The signatory of Form MA–T on behalf of, and with the authority of, the municipal advisor will be required to represent that the information and statements contained in Form MA–T are current, true, and complete.

Completion of Item 1 of Form MA–T involves supplying basic identifying information that should be readily available to municipal advisors. Item 2 of Form MA–T describes seven types of

[54] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule and form to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that the notice and public comment are "impracticable, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the Federal agency promulgating the rule determines").

[55] 44 U.S.C. 3501 *et seq.*

[56] *See* paragraphs (a) and (i) of Section 975 of the Dodd-Frank Act.

services that may be provided by a municipal advisor, and an applicant is asked to check one or more boxes to identify any type that applies to it. If the municipal advisor provides other municipal advisory services that are not listed in the check-box list, the municipal advisor must provide a narrative description of the services. The Commission estimates that the paperwork burden of Items 1 and 2 will be approximately one-half hour.

Providing answers to the questions on Item 3 of Form MA–T entails gathering the accurate disciplinary history information regarding the municipal advisor and its associated municipal advisor professionals. Form MA–T will permit disciplinary actions previously reported in connection with other filings (such as Form BD, Form ADV, or Form U4) to be provided by referencing such other filings. The Commission notes, however, that, while an "associated person of a municipal advisor," as defined under the Dodd-Frank Act, includes a broad category of control persons and employees,[57] the information that must be provided in Item 3 of Form MA–T concerns a smaller subset of persons of this category, namely "municipal advisor professionals." A municipal advisor professional for these purposes is defined to include only persons who are directly engaged in municipal advisory activities, persons in the supervisory chain overseeing these activities, and members of the executive or management committees of the municipal advisor.[58]

The Commission believes that the size of municipal advisors will likely range from sole proprietorships to large firms, and will include firms that provide municipal advisory services as part of a broader array of financial services serving many types of clients, and may have many associated municipal advisor professionals. Thus the paperwork burden will vary from applicant to applicant, depending on its size.

The Commission has previously estimated that, in the case of Form ADV—a similar, but far more comprehensive form than Form MA–T, which must be completed for the registration of investment advisers—the average time necessary to complete the form is approximately 4.32 hours, and that estimate has been subject to notice and comment. The Commission believes that the paperwork burden of completing Form MA–T will be less than this amount of time because this form is less comprehensive than Form ADV and will thus require less time to complete. The Commission estimates that the average amount of time for a municipal advisor to complete Form MA–T is approximately 2.5 hours. This estimate includes all of the time necessary to research, evaluate, and gather all of the information that is requested in the form and all of the time necessary to complete and submit the form.[59]

Based on discussions with the MSRB, the Commission estimates that approximately 1,000 municipal advisors will be required to complete Form MA–T.[60] Thus, the total burden hours will be approximately 2,500 hours.

Once a municipal advisor temporarily satisfies the registration requirement, the municipal advisor must promptly amend Form MA–T when information concerning Items 1 or 3 on Form MA–T becomes inaccurate or to withdraw from registration. The Commission estimates that the average time necessary to complete an amended form would be approximately 30 minutes because only certain parts of the form will be completed for amendments. For the purposes of this PRA analysis, the Commission assumes that all 1,000 municipal advisors would have to amend their forms once during the period September 1, 2010 and December 31, 2011. The estimate of the number of municipal advisors that will submit amendments is likely to be lower than all 1,000 as some municipal advisors will not have any changes to their forms during this period. It is also likely that some of these 1,000 municipal advisors will have to submit more than one amendment. However, given the short transition period, the Commission believes that on balance its estimate of one amendment for each municipal advisors is conservative. Therefore, the total burden for these amendments during this period would be 500 hours,[61] and the total estimated paperwork burden for Form MA–T and keeping it properly updated is 3,000 hours.[62]

In addition, the Commission believes that some municipal advisors will seek outside counsel to help them comply with the requirements of Rule 15Ba2–6T and Form MA–T. For PRA purposes, the Commission assumes that all 1,000 municipal advisors will on average consult outside counsel for one hour to help them comply with the requirements. The Commission believes that the estimate of the number of municipal advisors that will consult outside counsel is likely to be lower than 1,000 as some municipal advisors will choose not to seek outside counsel or will rely entirely on in-house counsel. The Commission also recognizes that some municipal advisors will hire outside counsel for more than one hour and others may hire counsel for less than one hour. On balance, the Commission believes that its estimate that on average each municipal advisor will hire outside counsel for one hour is conservative. The Commission estimates that the total cost for all municipal advisors to hire outside counsel to review their compliance with the requirements of Rule 15Ba2–6T and Form MA–T to be approximately $400,000.[63]

B. Collection of Information Is Mandatory

Any collection of information pursuant to Rule 15Ba2–6T and Form MA–T is a mandatory collection of information.

C. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information made pursuant to Rule 15Ba2–6T will not be confidential and will be made publicly available. The collection of information that will be provided pursuant to the Form MA–T will be publicly available via the Internet.

[57] *See* Section 975(e) of the Dodd-Frank Act.

[58] *See supra* text accompanying notes 37–38.

[59] The Commission notes that some municipal advisors that are required to register under Rule 15Ba2–6T will also be registered with the Commission as broker-dealers and/or investment advisers. The Commission believes that these persons could require less time to research and complete this temporary registration process to the extent information contained in those other registration(s) can be cross-referenced, avoiding the need to repeat information on Form MA–T.

[60] Telephone call between Martha Mahan Haines, Commission, and Ernesto Lanza, General Counsel, MSRB on August 17, 2010 (estimating the number of persons required to complete Form MA–T). The MSRB is the self-regulatory organization created by Congress to oversee the municipal securities market.

[61] 500 hours = 1,000 (persons required to amend Form MA–T) × 0.5 (30 minutes) (estimated time to complete amended Form MA–T).

[62] 3,000 = 2,500 hours (total estimated burden to complete Form MA–T for all municipal advisors) + 500 hours (total estimated burden to complete amendments to Form MA–T for all municipal advisors).

[63] $400,000 = 1,000 (estimated number municipal advisors that hire outside attorney) × 1 hour (estimated time spent by outside attorney to help municipal advisor comply with rule) × $400 (hourly rate for an attorney). The $400 per hour figure for an attorney is from the Securities Industry and Financial Markets Association's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

V. Cost-Benefit Analysis

A. Introduction

The Commission is sensitive to the costs and benefits of its rules. The Commission has identified certain costs and benefits of Rule 15Ba2–6T and Form MA–T and request comment on all aspects of this cost-benefit analysis. Where possible, the Commission requests that commenters provide empirical data to support any positions advanced.

The Commission is adopting, as an interim final temporary rule, Rule 15Ba2–6T and Form MA–T for the temporary registration of municipal advisors. The Commission is adopting this rule and Form MA–T in response to the changes implemented by the Dodd-Frank Act, which prohibits municipal advisors from providing municipal advisory services to a municipal entity or obligated person, unless the municipal advisor is registered.

B. Benefits

Section 975 of the Dodd-Frank Act generally is intended to strengthen oversight of municipal securities and broaden current municipal securities market protections to cover, among other things, previously unregulated market participants. Rule 15Ba2–6T and Form MA–T are designed to meet this objective temporarily by requiring each municipal advisor to provide basic identifying information about itself, a description of its activities, and facts regarding its disciplinary history, if any, and that of any of its associated municipal advisor professionals. This transitional registration process will allow municipal advisors to temporarily satisfy the registration requirement in order that they may continue to act as municipal advisors on and after October 1, 2010. Absent such a means to register, municipal advisors would have to cease providing municipal advisory services, which may have a significant adverse impact on their businesses and on municipal entities and obligated persons engaged in issuing municipal securities or other activities for which they obtain the advice of a municipal advisor. The interim final temporary rule is designed to provide a method by which municipal advisors may continue to provide municipal advisory services to municipal entities and obligated persons without violating Section 15B(a)(2) of the Exchange Act.

In addition, disclosure of the disciplinary history of every municipal advisor—sole proprietor or large firm—and every municipal advisor professional will become available, not only to regulators, but also to all members of the investing community, benefitting investors, municipal entities and the general public in the area of municipal investments. Municipal entities issuing securities and obligated persons will have access to this information and thus will be more fully informed when choosing those who would guide them and issue and support quality investment vehicles. Also, the standardization of the required disclosure format would lower the costs for municipal entities in comparing municipal advisors. Lower costs generally make the market more competitive. The Commission believes that this will benefit the municipal market, and ultimately could benefit State and local governments that raise funds for the good and welfare of their citizens, including roads, bridges, energy and other necessary utility infrastructures, as well as education, health, safety, and the wide range of other benefits and social support that these governments provide.

C. Costs

In promulgating the provisions of Section 975 of the Dodd-Frank Act, Congress established a mandatory registration regime for municipal advisors. The establishment of this Congressionally-mandated regulatory regime for municipal advisors will impose burdens on municipal advisors to register with the Commission and to comply with Commission rules. In order to temporarily satisfy the registration requirement, municipal advisors must complete Form MA–T on the Commission's public Web site. The Commission believes that municipal advisors will principally incur these costs when the rule and the form take effect on October 1, 2010. As noted in the PRA section above, the Commission estimated that the total one-time reporting burden for all municipal advisors to complete Form MA–T would be approximately 2,500 hours. Based on this estimate, the Commission believes the total labor cost for all municipal advisors to complete the Form MA–T will be approximately $735,000.[64] Municipal advisors will also incur costs when they need to amend or withdraw the registration. As noted in the PRA section above, the Commission estimated that the total hourly burden for all municipal advisors to complete an amended Form MA–T would be approximately 500 hours. Based on this estimate, the Commission believes the total annual labor cost for all municipal advisors to complete an amended Form MA–T will be approximately $147,000.[65] In addition to the costs associated with completing and amending Form MA–T, the Commission also believes that some persons will incur costs associated with hiring outside counsel to help them determine whether they must file and to comply with the requirements of Rule 15Ba2–6T and Form MA–T. As noted in the PRA section above, the Commission estimated that the total cost for all municipal advisors to hire outside counsel to review their compliance with the requirements of Rule 15Ba2–6T and Form MA–T to be approximately $400,000.[66]

The Commission does not believe that the process of temporary registration through Form MA–T will be particularly burdensome—given the brevity of the form, its convenient availability online, and the automated manner of submitting the information. However, costs will be incurred in completing the disciplinary information sections of Form MA–T, which will demand care in compiling legally accurate statements of disciplinary history of a municipal advisor and its associated municipal advisor professionals. The Commission has reflected these estimated costs discussed above. The Commission also recognizes the possibility that the cost of registering could be passed on to the municipal entity customers of municipal advisors in the form of higher fees. Given the relatively small magnitude of these costs and the large number of municipal entity issuers (nearly 51,000 issuers as of 2009),[67] the Commission expects any increase in municipal advisory fees attributable to registration would be minimal.

[64] 2,500 hours (total estimated hourly burden under the rule for all municipal advisors to complete a Form MA–T) × $294 (hourly rate for a Compliance Manager) = $735,000. The $294 per hour figure for a Compliance Manager is from the Securities Industry and Financial Markets Association's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[65] 500 hours (total estimated hourly burden under the rule for all municipal advisors to complete an amended Form MA–T) × $294 (hourly rate for a Compliance Manager) = $147,000. The $294 per hour figure for a Compliance Manager is from the Securities Industry and Financial Markets Association's publication titled *Management & Professional Earnings in the Securities Industry 2009,* as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[66] *See supra* Section IV.A.

[67] *See* Securities Exchange Act Release No. 62184A (May 26, 2010), 75 FR at 33101 (June 10, 2010).

D. Request for Comment

The Commission requests comment on all aspects of this cost-benefit analysis. Commenters should address in particular whether Rule 15Ba2–6T and Form MA–T will generate the anticipated benefits or impose any other costs in municipal advisors. The Commission also requests comment as to any costs or benefits associated with Rule 15Ba2–6T and Form MA–T that may not have been considered here, including whether the costs associated with the rule will have a disproportionate impact on certain municipal advisors.

VI. Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition and capital formation.[68] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[69] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed below, the Commission believes that Rule 15Ba2–6T may promote efficiency and competition, and is likely to have no impact on capital formation.

A. Efficiency

In adopting Rule 15Ba2–6T, the Commission has considered its effect on efficiency, competition and capital formation. Rule 15Ba2–6T and Form MA–T are designed to improve the efficiency of the Commission's oversight of municipal advisors, by requiring the registration and identification to the Commission, for the first time, of people engaged in providing municipal advisory services. The temporary registration of municipal advisors will facilitate the Congressional mandate to register municipal advisors and establish an efficient system to provide information to the Commission, the public, and municipal entities.

B. Competition

The Commission also believes that adoption of Rule 15Ba2–6T may promote competition of municipal advisory service providers by allowing municipal advisors to temporarily satisfy the registration requirement that is mandated by October 1, 2010 under the Dodd-Frank Act and thus be permitted to continue to provide advice to, or on behalf of, a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person on October 1, 2010. In addition, it may promote competition by making uniform information, especially disciplinary information, for all municipal advisors available to consumers of the services of municipal advisors on which to base a selection. Furthermore, because all municipal advisors must register, none would be placed at a competitive advantage or disadvantage over others. The Commission believes that Rule 15Ba2–6T will not result in a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

C. Capital Formation

The Commission has also considered the effect of Rule 15Ba2–6T on capital formation. Rule 15Ba2–6T allows municipal entities and obligated persons issuing securities to better choose their advisors based on the information required to be disclosed by Rule 15Ba2–6T; however, this benefit would most likely only affect the way in which municipal entities and obligated persons choose municipal advisors, but would likely have no impact on capital formation because it does not affect the borrowing needs of municipal entities or obligated persons. Therefore, the Commission believes that the rule is not likely to have an effect on capital formation.

The Commission requests comment on this analysis of whether the adoption of Rule 15Ba2–6T will promote efficiency, competition, and capital formation or have an impact or burden on competition. The Commission seeks comments on whether Rule 15Ba2–6T would promote capital formation. Specifically, the Commission requests comments on the extent to which the ability of municipal entities and obligated persons to obtain information concerning registered municipal advisors from Form MA–T before hiring a municipal advisor would promote capital formation. In addition, the Commission seeks comments on the manner and extent to which Rule 15Ba2–6T would assist municipal entities and obligated persons to raise additional capital. The Commission requests commenters to provide empirical data and other factual support for their views, if possible.

VII. Final Regulatory Flexibility Analysis

The Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) in accordance with Section 604(a) of the Regulatory Flexibility Act (RFA).[70] This FRFA relates to new Rule 15Ba2–6T under the Exchange Act, which will permit municipal advisors to temporarily satisfy the registration requirement set forth in the Dodd-Frank Act until such time as the Commission promulgates a final permanent regulatory program.[71]

Section 975 of the Dodd-Frank Act generally is intended to strengthen oversight of municipal securities and broaden current municipal securities market protections to cover, among other things, previously unregulated market participants. Rule 15Ba2–6T and Form MA–T are designed to meet this mandate by requiring each municipal advisor to provide basic identifying information about itself, a description of its activities, and facts regarding its disciplinary history, if any, and that of any of its associated persons who are municipal advisor professionals.

A. Need for and Objectives of the Rule and Form MA–T

Sections I–III of this Release describe the reasons for and objectives of interim final temporary Rule 15Ba2–6T and Form MA–T. As discussed above, the Commission is adopting an interim final temporary rule that establishes a means for municipal advisors, as defined in the Dodd-Frank Act, to satisfy temporarily the requirement that they register with the Commission by October 1, 2010. This rule and form are necessary so that municipal advisors can meet this Congressional mandate and continue to function as municipal advisors.

B. Small Entities Subject to the Rule

In developing Rule 15Ba2–6T and Form MA–T, the Commission has considered their potential impact on small entities that will be subject to the rule. All municipal advisors must register with the Commission, including small entities, and will be subject to the rule. Because "municipal advisor" is a new term under the Dodd-Frank Act,

[68] 15 U.S.C. 78c(f).

[69] 15 U.S.C. 78w(a)(2).

[70] *See* 5 U.S.C. 604(a).

[71] Although the requirements of the RFA are not applicable to Rules adopted under the Administrative Procedures Act's "good cause" exception, *see* 5 U.S.C. 601(2) (defining "rule" and notice requirement under the Administrative Procedures Act), the Commission nevertheless prepared this Final Regulatory Flexibility Act Analysis.

the Commission has not promulgated a rule to define which municipal advisors should be identified as a "small business" or "small organization" for purposes of the RFA. However, the Commission has referred to its definitions of small entities in the Exchange Act and Investment Advisers Act to inform this FRFA.

Paragraph (c)(1) of Rule 0–10 under the Exchange Act[72] states that the terms "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that has total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Section 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As discussed above, based on industry sources, the Commission estimates that approximately 1,000 municipal advisors must complete Form MA–T on the Commission's public Web site.[73] Industry sources were unable to provide an estimate, based on the definitions discussed above, of how many of these advisors would be a small business or small organization. However, for the purpose of this FRFA, the Commission believes that the proportion of small municipal advisors subject to the rule to all registered municipal advisors subject to the rule may be similar to the proportion of small registered broker-dealers to all registered broker-dealers. The Commission has previously estimated that approximately 17% of all broker-dealers are "small" for the purposes of the RFA.[74] Therefore, the Commission estimates that 170 municipal advisors will be small entities subject to the rule.[75]

The Commission requests comment on its estimate of how many municipal advisors would be small entities for purposes of the RFA. Specifically, the Commission seeks comment on whether there are alternative ways to estimate the number of municipal advisors that are small entities. Is the proportion of small registered municipal advisors to all registered municipal advisors for purposes of the RFA similar to the proportion of small registered broker-dealers to all registered broker-dealers?

As noted above, the Commission has defined in Rule 0–10 small entity under the Exchange Act for purposes of the RFA. Should the Commission consider including in that rule criteria specifically related to municipal advisors? For example, should it depend on the number of municipalities the municipal advisor advises? On the number of issuances with respect to which the municipal advisor provides advice? On the total amount of issuances outstanding for the municipalities the advisor advises? On other factors or a combination of factors?

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 15Ba2–6T and Form MA–T impose certain reporting and compliance requirements on small municipal advisors, requiring them to provide basic identifying information about themselves, a description of their activities, and facts regarding their disciplinary history, if any, and that of any of their associated persons who are municipal advisor professionals.[76] The rule does not impose any recordkeeping requirements.

As discussed above, current municipal advisors are required by statute to register with the Commission by October 1, 2010 by completing Form MA–T. Form MA–T will be accessible through a link located on the Commission's Web site, *http://www.sec.gov,* beginning on or about September 1, 2010, at which time municipal advisors will be able to submit forms for temporary registration and to amend and withdraw such registrations through the Commission's Web site.

As noted above, the Commission estimated that the total initial reporting burden for all municipal advisors to complete Form MA–T would be approximately 2,500 hours and the total associated cost to complete the Form is approximately $735,000.[77] Municipal advisors will also incur costs when they need to amend or withdraw the registration. As noted above, the Commission estimated that the total hourly burden for all municipal advisors to complete an amended Form MA–T would be approximately 500 hours.[78] The Commission estimates that the total annual labor cost for all municipal advisors to complete an amended Form MA–T will be approximately $147,000.[79] In addition to the costs associated with completing and amending Form MA–T, the Commission also believes that some municipal advisors will incur costs associated with hiring outside counsel to determine the need to file and to comply with the requirements of Rule 15Ba2–6T and Form MA–T. As noted above, the Commission estimates that the total costs for all municipal advisors to hire outside counsel to be approximately $400,000.[80]

D. Agency Action To Minimize Effect on Small Entities

As required by the RFA, the Commission has considered alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. Rule 15Ba2–6T should not adversely affect small entities because it imposes minimal new reporting requirements to complete Form MA–T and submit it electronically on the Commission's Web site. The Commission does not believe that it is appropriate to develop separate requirements for small entities because all municipal advisors should be subject to the same temporary registration process. In developing Rule 15Ba2–6T and Form MA–T, the Commission considered requiring additional information from municipal advisors and using different electronic delivery mechanisms. After taking into account the short timeframe for municipal advisors to comply with the Congressional mandate to register with the Commission, the Commission determined that the Rule 15Ba2–6T and Form MA–T strikes the appropriate balance of minimizing the burden on small municipal advisors while allowing the Commission to meet its mandate under the Dodd-Frank Act.

Counteracting these relatively minor costs is the benefit that small advisors in particular would obtain under the new regime. The registration of municipal advisors (large or small) would improve the availability of information and thus reduce information research costs of investors and issuers in the municipal bond market. These information research costs are generally higher with respect to smaller entities, about which it is often more difficult to obtain information than for large entities. The increased availability of information about smaller entities may have the result that more investors and issuers will locate those entities and be willing

[72] 17 CFR 240.0–10(c)(1).

[73] *See supra* Section IV.A.

[74] *See* Securities Exchange Act Release No. 34–61908 (April 14, 2010), 75 FR 21456, 21483 (April 23, 2010).

[75] 170 = 1,000 (estimated number of municipal advisors subject to the Rule) × .17 (estimated percentage of municipal advisors that are small entities).

[76] Sections I–III of this Release describe these requirements in more detail.

[77] *See supra* Sections IV.A. and V.C.

[78] *See supra* Section IV.A.

[79] *See supra* Section V.C.

[80] *See supra* Section IV.A.

to engage their services. Thus, smaller advisors are likely to benefit proportionally more from the improved and relatively standardized disclosure than the larger, more established entities, which might already be disclosing information for other purposes (for example, if they are broker-dealers, or underwriters).

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with Rule 15Ba2–6T.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities.[81] In connection with the interim final temporary rule, the Commission considered the following alternatives: (1) Establishing different compliance or reporting standards that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance requirements under the rule; (3) using performance rather than design standards; and (4) exempting small municipal advisers from coverage of all or part of the Rule 15Ba2–6T and Form MA–T.

The Commission believes that the interim final temporary rule strikes the appropriate balance between minimizing the burden on small municipal advisors and allowing the Commission to meet its mandate under the Dodd-Frank Act to provide an appropriate and meaningful process for registering municipal advisors. The Commission does not believe that establishing different compliance or reporting standards is necessary because the information requested in Form MA–T is basic and minimally necessary to meet the statutory goals of the Dodd-Frank Act. Moreover, the Commission believes that completing and submitting Form MA–T on the Commission's Web site should not be unduly burdensome or costly for municipal advisors, including small municipal advisors. In developing Rule 15Ba2–6T and Form MA–T, the Commission considered requiring additional information from municipal advisors and using different electronic delivery mechanisms. In light of the relatively short time frame for compliance and the resources available to small municipal issuers, the Commission decided that the information in the Form MA–T and the electronic submission requirements are simple, straightforward, and take into account the resources available to all municipal advisors, including small municipal advisors. The Commission believes that it is inconsistent with the goals of a uniform registration system to use performance standards rather than design standards. Further, the Commission believes that it would be inconsistent with the purposes of the Dodd-Frank Act to exempt small entities entirely from having to comply with the interim final temporary rule.

G. General Request for Comment

The Commission is soliciting comments regarding the analysis. The Commission requests comment on the number of small entities that will be subjected to the rule and whether the interim final temporary rule will have any effects that have not been discussed. The Commission requests that commenters describe the nature of any effects on small entities subject to the rule and provide empirical data to support the nature and extent of the effect.

VIII. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 15B (15 U.S.C. 78*o*–4) and 36 (15 U.S.C. 78mm), the Commission is adopting § 240.15Ba2–6T and 249.1300T of Title 17 of the *Code of Federal Regulations* in the manner set forth below.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Municipal advisors, temporary registration requirements.

Text of Rule

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

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

■ 1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

■ 2. Section 240.15Ba2–6T is added to read as follows.

§ 240.15Ba2–6T Temporary registration as a municipal advisor; required amendments; and withdrawal from temporary registration.

(a) A municipal advisor (as defined in Section 15B(e)(4) of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78*o*–4(e)(4)) shall file with the Commission, pursuant to Section 15B(a) (15 U.S.C. 78*o*–4(a)) of the Act, the information set forth on Form MA–T (17 CFR 249.1300T) electronically through the Commission's Internet Web site (*http://www.sec.gov*) to temporarily register or to withdraw from temporary registration.

(b) A temporary registration must promptly be amended:

(1) Whenever any information concerning Items 1 or 3 of Form MA–T (17 CFR 249.1300T) have become inaccurate in any way; and

(2) Whenever a municipal advisor wishes to withdraw from registration.

(c) Every initial registration and each amendment to a registration or withdrawal from registration filed pursuant to this rule shall constitute a "report" within the meaning of Sections 15B(c) (15 U.S.C. 78*o*–4(c)), 17(a) (15 U.S.C. 78q(a)), 18(a) (15 U.S.C. 78r(a)) and 32(a) (15 U.S.C. 78ff(a)) and other applicable provisions of the Act.

(d) Each Form MA–T (17 CFR 249.1300T), including each amendment to a registration or withdrawal from registration, is considered filed with the Commission upon its completion on the Commission web page established for that purpose and the Commission has sent confirmation that the form was filed to the municipal advisor.

(e) All temporary registrations submitted pursuant to this section will expire on the earlier of:

(1) The date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose;

(2) The date on which the municipal advisor's temporary registration is rescinded by the Commission; or

(3) On December 31, 2011.

(f) This section will expire on December 31, 2011.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201; and 18 U.S.C. 1350 *et seq.* unless otherwise noted.

* * * * *

■ 4. Subpart N, consisting of § 249.1300T, is added to read as follows.

[81] *See* 5 U.S.C. 603(c).

Subpart N—Forms for Registration of Municipal Advisors

§ 249.1300T Form MA–T—For temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration.

The form shall be used for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration pursuant to Section 15B of the Exchange Act, (15 U.S.C. 78*o*).

[**Note:** The text of Form MA–T does not, and the amendments will not, appear in the Code of Federal Regulations.]

BILLING CODE 8010–01–P

OMB APPROVAL
OMB Number: 3235-0659
Expires: March 31, 2011
Estimated average
Burden hours per form: 2.5
Per amendment: 0.5

Note: Form MA-T is an electronic form accessible through a link located on the website of the U.S. Securities and Exchange Commission at www.sec.gov. It may not be filed in paper form.

FORM MA-T

MUNICIPAL ADVISOR TEMPORARY REGISTRATION FORM

ITEM 1 - IDENTIFYING INFORMATION

A. This is:
- ☐ An initial temporary registration as a municipal advisor
- ☐ An amendment of temporary registration as a municipal advisor
  Municipal Advisor Registration Number: _ _ _ -_ _ _ _ _ _ _
- ☐ A withdrawal of temporary registration as a municipal advisor
  Municipal Advisor Registration Number: _ _ _ -_ _ _ _ _ _ _

B. Full Legal Name of municipal advisor:
_____
(firm name or name of sole proprietor)

C. Name under which the municipal advisor conducts business, if different:
_____

D. IRS Employer Identification Number of the municipal advisor: _____
(Note: If you are a sole proprietor, leave this space blank. Do NOT fill in your social security number.)

E. If the municipal advisor is also registered with the SEC as an investment adviser, its SEC file number: 801-_____

F. If the municipal advisor is also registered with the SEC as a broker, dealer, or municipal securities dealer, its SEC file number: _____

G. If the municipal advisor has a number ("CRD Number") assigned by the FINRA's CRD system or by the IARD system, its CRD number (*Do not provide the CRD number of the municipal advisor's officers, employees, or affiliates)*: _____

H. Municipal advisor's principal office and place of business:

(1) Address *(do not use a P.O. Box)*:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

(2) Telephone number at this location: _____
(area code) (telephone number)

(3) Facsimile number at this location, if any:
_____
(area code) (telephone number)

(4) General e-mail address for the municipal advisor, if any:
_____@_____

(5) Web site, if any, of the municipal advisor

www._____ . _____

I. Mailing address, if different from the municipal advisor's principal office and place of business address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

J. Contact person: *[The contact person should be a person whom the municipal advisor has authorized to receive information and respond to questions about this registration.]*

_____
(name)

_____
(title)

_____ _____
(telephone number, including area code) (facsimile number, if any, including area code)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____@_____
(e-mail address, if any, of contact person)

ITEM 2 - MUNICIPAL ADVISORY ACTIVITIES

What type(s) of municipal advisory services does the municipal advisor provide? *Check all that apply.*

- ☐ (1) Advice concerning the issuance of municipal securities
- ☐ (2) Advice concerning the investment of the proceeds of municipal securities
- ☐ (3) Advice concerning guaranteed investment contracts
- ☐ (4) Recommendation and/or brokerage of municipal escrow investments
- ☐ (5) Advice concerning the use of municipal derivatives (e.g., swaps)
- ☐ (6) Solicitation of business from a municipal entity or obligated person for an unaffiliated person or firm (e.g., third party marketers, placement agents, solicitors and finders)
- ☐ (7) Preparation of feasibility studies, tax or revenue projections, or similar products in connection with offerings or potential offerings of municipal securities
- ☐ (8) Other (specify):_____

ITEM 3 - DISCIPLINARY INFORMATION

In this Item, we ask for information about the municipal advisor's disciplinary history and the disciplinary history of all associated municipal advisor professionals (as defined in the Glossary accompanying this form). For any question to which you answer "yes," a drop-down box will appear for you to supply relevant information. *Note: If you have submitted a Criminal Disclosure Report Page or Pages, a Regulatory Action Disclosure Page or Pages, or a Civil Judicial Action Disclosure Reporting Page or Pages to FINRA or the SEC in connection with other filings, you may provide such information by referencing the public disclosure system (BrokerCheck or Investment Adviser Public Disclosure) that currently contains the disclosure, the CRD number of the entity under which the disclosure is listed, and whether the entity under which the disclosure is listed is a firm or individual. (Example: Please reference BrokerCheck, CRD 123456, for the individual Mr. X for reportable disclosures; Example: Please reference IAPD, CRD 987654, for the firm X's reportable disclosures.)*

One event may result in "yes" answers to more than one of the questions below.

A. In the past ten years, has the municipal advisor or any associated municipal advisor professional:

(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony? YES/NO

(2) been charged with any felony? YES/NO
You may limit your response to Item 3.A(2) to charges that are currently pending.

B. In the past ten years, has the municipal advisor or any associated municipal advisor professional:

(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? YES/NO

(2) been charged with a misdemeanor listed in Item 3.B(1)? YES/NO
You may limit your response to Item 3.B(2) to charges that are currently pending.

C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:

(1) found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission? YES/NO

(2) found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of its regulations or statutes? YES/NO

(3) found the municipal advisor or any associated municipal advisor professional to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES/NO

(4) entered an order against the municipal advisor or any associated municipal advisor professional in connection with investment-related activity? YES/NO

(5) imposed a civil money penalty on the municipal advisor or any associated municipal advisor professional, or ordered the municipal advisor or any associated municipal advisor professional to cease and desist from any activity? YES/NO

D. Has any other federal regulatory agency, any state regulatory agency, or any foreign financial regulatory authority:

(1) ever found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission, or been dishonest, unfair, or unethical? YES/NO

(2) ever found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of investment-related regulations or statutes? YES/NO

(3) ever found the municipal advisor or any associated municipal advisor professional to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES/NO

(4) in the past ten years, entered an order against the municipal advisor or any associated municipal advisor professional in connection with an investment-related activity? YES/NO

(5) ever denied, suspended, or revoked the municipal advisor's or any associated municipal advisor professional's registration or license, or otherwise prevented the municipal advisor or any associated municipal advisor professional, by order, from associating with an investment-related business or restricted the municipal advisor's or any associated municipal advisor professional's activity? YES/NO

E. Has any self-regulatory organization or commodities exchange:

(1) ever found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission? YES/NO

(2) ever found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the SEC)? YES/NO

(3) ever found the municipal advisor or any associated municipal advisor professional to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES/NO

(4) ever disciplined the municipal advisor or any associated municipal advisor professional by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities? YES/NO

F. Has the municipal advisor's or any associated municipal advisor professional's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended? YES/NO

G. Is the municipal advisor or any associated municipal advisor professional the subject of any regulatory proceeding that could result in a "yes" answer to any part of Item 3.C., 3.D., or 3.E.? YES/NO

H. (1) Has any domestic or foreign court:

(a) in the past ten years, enjoined the municipal advisor or any associated municipal advisor professional in connection with any investment-related activity? YES/NO

(b) ever found that the municipal advisor or any associated municipal advisor professional was involved in a violation of investment-related statutes or regulations? YES/NO

(c) ever dismissed, pursuant to a settlement agreement, an investment-related civil action brought against the municipal advisor or any associated municipal advisor professional by a state or foreign financial regulatory authority? YES/NO

(2) Is the municipal advisor or any associated municipal advisor professional now the subject of any civil proceeding that could result in a "yes" answer to any part of Item 3.H(1)? YES/NO

ITEM 4 – EXECUTION

The municipal advisor consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the municipal advisor's municipal advisory activities may be given by registered or certified mail or confirmed telegram to the municipal advisor's contact person at the main address, or mailing address, if different, given in Items 1.H, 1.I., and 1.J.

The undersigned deposes and says that he/she has executed this form on behalf of, and with the authority of, the municipal advisor. The undersigned and the municipal advisor represent that the information and statements contained herein and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and the municipal advisor further represent that, if this is an amendment, to the extent that any information previously submitted is not amended such information is currently accurate and complete.

Date: _____

Full Legal Name of Municipal Advisor: _____

By. _____
(signature)

Title: _____

Warning: Intentional misstatements or omissions of fact constitute Federal criminal violations. See, 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

FORM MA-T
MUNICIPAL ADVISOR TEMPORARY REGISTRATION FORM

General Instructions

Note: Beginning on October 1, 2010, Section 15B(a)(1)(B) of the Securities Exchange Act of 1934 makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Securities and Exchange Commission. *See Glossary for definitions of terms used in Form MA-T and in these instructions.*

Read these instructions carefully before filing Form MA-T. Failure to follow these instructions or properly complete the form may result in temporary registration as a municipal advisor being delayed or rejected.

1. What is From MA-T?

Form MA-T provides for temporary registration by municipal advisors.

2. Where can I get Form MA-T?

Form MA-T is available on the SEC's website: www.sec.gov/info/municipal/form_MA-T.htm.

3. When must Form MA-T be used?

Municipal advisors use Form MA-T to:

- File initial temporary registration as a municipal advisor with the Securities and Exchange Commission
- Amend those temporary registrations
- Withdraw from temporary registration

4. What is the deadline for filing Form MA-T for temporary registration?

Current municipal advisors must file Form MA-T by October 1, 2010. These municipal advisors should allow enough time to establish an account and obtain access credentials (username and password) and complete the on-line version of the Form by that date. Any person who desires to become a municipal advisor after October 1, 2010 should file Form MA-T before providing advice to a municipal entity or obligated person.

5. When is a municipal advisor required to update its Form MA-T?

A municipal advisor must amend the Form MA-T promptly if information provided in response to Items 1 or 3 becomes inaccurate in any way. Failure to update Form MA-T, as required by

this instruction, is a violation of SEC rule 15Ba2-6T and could lead to revocation of a municipal advisor's temporary registration.

6. Where and how do I sign Form MA-T?

Form MA-T must be signed with the typed name of the municipal advisor and of the name and title of the signer on the appropriate lines in Item 4.

7. Who must sign Form MA-T?

The individual who signs the form depends upon the form of organization of the municipal advisor:

- For a sole proprietorship, the sole proprietor should sign.
- For a partnership, a general partner should sign.
- For a corporation, an authorized principal officer should sign.
- For all others, an authorized individual who participates in managing or directing the municipal advisor's affairs should sign.

8. How do I file Form MA-T?

Complete Form MA-T using the Commission's public website (<www.sec.gov/info/municipal/form_MA-T.htm>). Follow the detailed instructions available on the website.

In order to begin filling out Form MA-T, it will be necessary to establish an account and obtain access credentials (username and password) with the SEC's temporary registration system. A submitter will need to fill out general user information fields such as name, address, phone number, e-mail address, organization name and employer identification number, and user account information (i.e., select a username and password), and to select and answer a security question. Once accepted by the temporary registration system, the submitter will receive an e-mail notification that the account has been established and the submitter will be able to access and complete Form MA-T. The Commission anticipates that submitters will ordinarily obtain access credentials the same day that they are requested. *However, to avoid the possibility of delay, the Commission encourages submitters to file Form MA-T prior to the initial October 1, 2010 submission deadline.*

9. Are there filing fees?

No.

10. Whom may I contact with questions about filing Form MA-T?

You may call the SEC Division of Trading and Markets' Office of Interpretation and Guidance at (202) 551-5777 or e-mail tradingandmarkets@sec.gov.

Federal Information Law and Requirements

Section 15B(a) the Securities Exchange Act [15 U.S.C. § 78o-4(a)] authorizes the SEC to collect the information required by Form MA-T. The SEC collects the information for regulatory purposes. Filing Form MA-T is mandatory for municipal advisors who are required to register with the SEC. The SEC maintains the information submitted on this form and makes it publicly available. The SEC will not accept forms that do not include required information.

SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Securities Exchange Act authorizes the SEC to collect the information on Form MA-T from applicants. See 15 U.S.C. § 78o-4. Filing the form is mandatory.

The main purpose of this form is to enable the SEC to provide for the temporary registration of municipal advisors. Every applicant for temporary registration with the SEC as a municipal advisor must file the form. See 17 C.F.R. § 240.15Ba2-6T. By accepting Form MA-T, however, the SEC does not make a finding that it has been completed or submitted correctly. The form is filed initially by every municipal advisor, no later than October 1, 2010. It is also filed promptly during the year to reflect changes to the information in Items 1 or 3 and when a municipal advisor wishes to withdraw from temporary registration. See 17 C.F.R. § 240.15Ba2-6T. The SEC maintains the information on the form and makes it publicly available through the SEC's public website.

Anyone may send the SEC comments on the accuracy of the burden estimate on page 1 of the form, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. § 3507.

The information contained in the form is part of a system of records subject to the Privacy Act of 1974, as amended. The SEC has published in the Federal Register the Privacy Act System of Records Notice for these records.

Intentional misstatements or omissions of facts constitute Federal Criminal Violations.

See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

GLOSSARY OF TERMS

1. **Affiliate**: (1) all officers, partners, or directors (or any person performing similar functions) of a municipal advisor; (2) all persons directly or indirectly controlling or controlled by a municipal advisor; and (3) all of a municipal advisor's current employees (other than employees performing only clerical, administrative, support or similar functions).

2. **Associated municipal advisor professional** includes: (1) any associated person of a municipal advisor primarily engaged in municipal advisory activities; (2) any associated person of a municipal advisor who is engaged in the solicitation of municipal entities or obligated persons (as defined in this Glossary); (3) any associated person of a municipal advisor who is a supervisor of any person described in (1) or (2) above; (4) any associated person of a municipal advisor who is a supervisor of any person described in (3) above up through and including, the Chief Executive Officer or similarly situated official designated as responsible for the day-to-day conduct of the municipal advisor's municipal advisory activities; and (5) any associated person of a municipal advisor who is a member of the executive or management committee of the municipal advisor or a similarly situated official, if any; and excludes any associated person of a municipal advisor whose functions are solely clerical or ministerial.

3. **Associated person of a municipal advisor**: any partner, officer, director, or branch manager of a municipal advisor (or any person occupying a similar status or performing similar functions); any other employee of a municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor, or any employee of such municipal advisor.

4. **Charged**: Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

5. **Control**: Control means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.
   - Each of a municipal advisor's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the municipal advisor.
   - A person is presumed to control a corporation if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.
   - A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.
   - A person is presumed to control a limited liability company ("LLC") if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of

the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC.

- A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

6. **Employee**: This term includes an independent contractor who performs advisory functions on behalf of a municipal advisor.

7. **Enjoined**: This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

8. **Felony**: For jurisdictions that do not differentiate between a felony and a misdemeanor, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

9. **FINRA CRD or CRD**: The Web Central Registration Depository ("CRD") system operated by FINRA for the registration of broker-dealers and broker-dealer representatives.

10. **Foreign Financial Regulatory Authority**: This term includes (1) a foreign securities authority; (2) another governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment-related activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

11. **Found**: This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

12. **Guaranteed Investment Contract:** any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract.

13. **IARD**: the Investment Adviser Registration Depository operated by FINRA.

14. **Investment-Related**: Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an investment adviser, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association).

15. **Investment Strategies**: plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.

16. **Involved**: Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

17. **Minor Rule Violation**: A violation of a self-regulatory organization rule that has been designated as "minor" pursuant to a plan approved by the SEC. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate self-regulatory organization to determine if a particular rule violation has been designated as "minor" for these purposes.)

18. **Misdemeanor**: For jurisdictions that do not differentiate between a felony and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

19. **Municipal Advisor:**
    - a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity;
    - includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in any of clauses (i) through (ii) above; and
    - does *not* include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)), any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice.

20. **Municipal Entity:** any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—
    - any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;
    - any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and
    - any other issuer of municipal securities;

21. **Municipal Financial Product**: municipal derivatives, guaranteed investment contracts, and investment strategies.

22. **Obligated person:** any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or

other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities."

23. **Order**: A written directive issued pursuant to statutory authority and procedures, including an order of denial, exemption, suspension, or revocation. Unless included in an order, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity or other restrictions.

24. **Person**: A natural person (an individual) or a company. A company includes any partnership, corporation, trust, limited liability company ("LLC"), limited liability partnership ("LLP"), sole proprietorship, or other organization.

25. **Principal Place of Business or Principal Office and Place of Business**: A municipal advisor's executive office from which its officers, partners, or managers direct, control, and coordinate the activities of the municipal advisor.

26. **Proceeding**: This term includes a formal administrative or civil action initiated by a governmental agency, self-regulatory organization or foreign financial regulatory authority; a felony criminal indictment or information (or equivalent formal charge); or a misdemeanor criminal information (or equivalent formal charge). This term does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

27. **Related Person**: Any affiliate and any person that is under common control with the municipal advisor.

28. **Self-Regulatory Organization or SRO**: Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago Board of Trade ("CBOT"), FINRA, New York Stock Exchange ("NYSE") and Municipal Securities Rulemaking Board ("MSRB") are self-regulatory organizations.

29. **Solicitation of a Municipal Entity or Obligated Person**: means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity.

By the Commission.

Dated: September 1, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–22255 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2010–N–0002]

Oral Dosage Form New Animal Drugs; Tiamulin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The supplemental NADA provides for use of an increased strength of tiamulin concentrate solution in the drinking water of swine for the treatment of certain bacterial respiratory and enteric diseases.

DATES: This rule is effective September 8, 2010.

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

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed a supplement to NADA 140–916 for DENAGARD (tiamulin) Liquid Concentrate administered in drinking water for the treatment of certain bacterial respiratory and enteric diseases in swine. The supplemental NADA provides for use of a 12.5 percent tiamulin concentrate solution. The supplemental NADA is approved as of June 14, 2010, and 21 CFR 520.2455 is amended to reflect the approval.

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

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 520.2455, revise paragraphs (a) and (b) to read as follows:

§ 520.2455 Tiamulin.

(a) *Specifications.* (1) Each gram of soluble powder contains 450 milligrams (mg) tiamulin hydrogen fumarate.

(2) Each milliliter (mL) of solution contains 125 mg (12.5 percent) tiamulin hydrogen fumarate.

(3) Each mL of solution contains 123 mg (12.3 percent) tiamulin hydrogen fumarate.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 058198 for products described in paragraphs (a)(1) and (a)(2) of this section.

(2) No. 059130 for products described in paragraphs (a)(1) and (a)(3) of this section.

* * * * *

Dated: September 1, 2010.

Elizabeth Rettie,

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

[FR Doc. 2010–22277 Filed 9–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2010–N–0002]

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin and Betamethasone Ophthalmic Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify the conditions of use of an approved new animal drug application (NADA) for gentamicin sulfate and betamethasone acetate ophthalmic solution. This action is being taken to comply with the Federal Food, Drug, and Cosmetic Act and to improve the accuracy of the regulations.

DATES: This rule is effective September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, email: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA has noticed that the approved conditions of use for GENTOCIN DURAFILM (gentamicin sulfate and betamethasone acetate) Ophthalmic Solution, sponsored by Intervet, Inc., 56 Livingston Ave., Roseland, NJ 07068 under NADA 34–267 are not codified. When this NADA was approved in 1967, codification of approved conditions of use for NADAs was not required. Accordingly, the regulations are amended in 21 CFR part 524 by adding § 524.1044i to reflect the approval. This action is being taken to comply with section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)) and to improve the accuracy of the regulations.

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

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

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

■ 2. Add § 524.1044i to read as follows:

§ 524.1044i Gentamicin and betamethasone ophthalmic solution.

(a) *Specifications.* Each milliliter (mL) of solution contains gentamicin sulfate equivalent to 3 milligrams (mg) of gentamicin base and 1 mg

betamethasone acetate equivalent to 0.89 mg betamethasone alcohol.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Instill one or two drops of solution in the conjunctival sac three or four times a day.

(2) *Indications for use.* For treatment of external bacterial infections of the eye (conjunctiva and cornea).

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 1, 2010.

Elizabeth Rettie,

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

[FR Doc. 2010–22276 Filed 9–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2000–P–0924] (formerly Docket No. FDA–2000–P–1533)

Cardiovascular Devices; Reclassification of Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the device type, standard percutaneous transluminal coronary angioplasty (PTCA) catheters, from class III (premarket approval) into class II (special controls). Cutting/scoring PTCA catheters remain in class III and continue to require premarket approval applications (PMAs). FDA is reclassifying these devices in accordance with the Federal Food, Drug, and Cosmetic Act (the act). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled "Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters" that will serve as the special control for the reclassified device type.

DATES: This final rule is effective October 8, 2010.

FOR FURTHER INFORMATION CONTACT: Kathryn O'Callaghan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6349.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f)) of the act (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)); or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification (510(k)) procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a PMA until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of postamendments devices is governed by section 513(f)(3) of the act (21 U.S.C.360c(f)(3)). This section states that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or that a manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(3)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device panel. If a petition is referred to a panel, the panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

The PTCA catheter is a postamendments device classified into class III under section 513(f)(1) of the act. Therefore, the device cannot be placed in commercial distribution unless it is subject to an approved premarket approval application (PMA) under section 515 of the act (21 U.S.C. 360e) or is reclassified.

On September 21, 2000, FDA filed a petition submitted under section 513(f)(3) of the act from COOK requesting reclassification of PTCA catheters from class III into class II. This reclassification petition did not include cutting or scoring PTCA catheters. In order to reclassify the PTCA catheter into class II, it is necessary that the proposed class have sufficient regulatory controls to provide reasonable assurance of safety and

effectiveness of the device for its intended use.

The COOK petition requested reclassification of PTCA catheters from class III to class II when indicated for balloon dilatation of a hemodynamically significant coronary artery or bypass graft stenosis in patients evidencing coronary ischemia for the purpose of improving myocardial perfusion. Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested changes in classification. FDA also asked the Circulatory System Devices Panel for its recommendation on the reclassification of PTCA catheters when used for treatment of acute myocardial infarction (MI), treatment of in-stent restenosis (ISR) and/or post-deployment stent expansion.

III. Device Description

FDA identifies this generic type of device, the subject of this reclassification, as follows: *Standard Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheter.* A PTCA catheter is a device that operates on the principle of hydraulic pressurization applied through an inflatable balloon attached to the distal end. A PTCA balloon catheter has a single or double lumen shaft. The catheter features a balloon of appropriate compliance for the clinical application, constructed from a polymer. The balloon is designed to uniformly expand to a specified diameter and length at a specific pressure as labeled, with well characterized rates of inflation and deflation and a defined burst pressure. The device generally features a type of radiographic marker to facilitate fluoroscopic visualization of the balloon during use. A PTCA catheter is intended for balloon dilatation of a hemodynamically significant coronary artery or bypass graft stenosis in patients evidencing coronary ischemia for the purpose of improving myocardial perfusion. A PTCA catheter may also be intended for the treatment of acute myocardial infarction; treatment of in-stent restenosis (ISR) and/or post-deployment stent expansion.

FDA is also issuing the following identification for the devices that will remain in class III: A cutting/scoring PTCA catheter is a balloon-tipped catheter with cutting/scoring elements attached, which is used in those circumstances where a high pressure balloon resistant lesion is encountered. A cutting/scoring PTCA catheter is intended for the treatment of hemodynamically significant coronary artery stenosis for the purpose of improving myocardial perfusion. A cutting/scoring PTCA catheter may also be indicated for use in complex type C lesions or for the treatment of in-stent restenosis.

IV. Recommendation of the Panel

At a public meeting on December 4, 2000, the Panel recommended (seven to one) that PTCA catheters be reclassified from class III to class II, when indicated for balloon dilatation of a hemodynamically significant coronary artery or bypass graft stenosis in patients evidencing coronary ischemia for the purpose of improving myocardial perfusion; or for treatment of acute myocardial infarction. The Panel did not recommend reclassification for PTCA catheters indicated for the treatment of in-stent restenosis and/or post-deployment stent expansion. The Panel recommended a guidance document, labeling, and postmarket surveillance as special controls. The Panel stated that the special controls will diminish some of the risks to health associated with certain PTCA catheters. The guidance document and labeling controls are intended to ensure the appropriate performance and use of the device by physicians. The Panel recommended postmarket surveillance as a special control to confirm that the other special controls being applied to these devices would be sufficient to ensure that there would not be an increase in adverse consequences to patients. In summary, the Panel believed that class II with special controls would provide reasonable assurance of the safety and effectiveness of the device.

The Panel recommended that PTCA catheters for the treatment of in-stent restenosis and/or post-deployment stent expansion not be included because of a lack of sufficient information about this use. Since the Panel meeting, however, additional data regarding this use have become available and have been reviewed by the agency.

FDA considered the Panel's recommendations and tentatively agreed that PTCA catheters, other than cutting/scoring PTCA catheters, should be reclassified from class III into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

Although the Panel included the possibility of requiring postmarket surveillance in their recommendation, FDA did not agree that specific postmarket surveillance such as device tracking or postapproval studies are needed for PTCA catheters. FDA believes that periodic assessment of adverse event reports through medical device reporting submitted to the agency is sufficient to address adverse effects caused by these devices and is the least burdensome way to gather this data for PTCA catheters. This practice is consistent with the manner in which these devices have been regulated as class III devices since the Panel meeting.

Further, after a review of adverse event reports submitted to FDA's Manufacturer and User Facility Device Experience (MAUDE) Database, the agency believes that the types of risks associated with the use of PTCA catheters for the treatment of in-stent restenosis and/or post-deployment stent expansion are similar enough to the risks associated with treatment of de novo lesions, such that the special controls discussed at the Panel meeting, with the addition of recommendations for specific nonclinical performance testing and the recommendation that in-stent restenosis patients be included in the clinical evaluation, when necessary, are adequate to control the risks to health for these devices.

Accordingly, in the **Federal Register** of May 30, 2008 (73 FR 31123), FDA issued the Panel's recommendation for public comment. FDA did not receive any comments regarding the Panel's recommendation. Elsewhere in this issue of the **Federal Register**, comments received regarding the draft guidance document are addressed in the notice of availability announcing the special controls guidance document.

V. FDA's Conclusion

After reviewing the data in the petition and presented at the Panel meeting, and after considering the Panel's recommendation and the comments on the notice of panel recommendation, FDA has determined that the device type, standard percutaneous transluminal coronary angioplasty (PTCA) catheters, can be reclassified from class III into class II.

On August 19, 2010, FDA issued an order to the petitioner reclassifying the devices into class II (special controls). The order also identified the special control applicable to these devices as a guidance document entitled "Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters." This class II special controls guidance document is now the special control for this device type.

An alternative approach to the special controls guidance document may be used if such approach satisfies the applicable statute and regulations.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for this device type will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Accordingly, as required by 21 CFR 860.134(b)(6) and (b)(7) of the regulations, FDA is announcing the reclassification of the standard percutaneous transluminal coronary angioplasty (PTCA) catheters, from class III into class II. In addition, FDA is issuing this final rule to codify the reclassification of the device by adding new § 870.5100.

VI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device type, from class III to class II, will relieve manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because reclassification will reduce regulatory costs with respect to this device, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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

Based on an assessment of identified risks associated with the use of PTCA catheters, FDA finds the requirements associated with a premarket approval as a class III device do not provide an added public health benefit over those that would result from the requirements under a class II (with special controls). At the same time, PTCA catheter manufactures, as makers of class III devices, bear all the costs associated with a premarket approval, including the cost of submitting the premarket approval application (PMA) and payment of user fees. One previously published estimate (in 73 FR 7497) suggests that the costs to prepare a PMA could potentially reach $1,000,000, in addition to user fees of $217,787 in FY (fiscal year) 2010.

In contrast, if reclassification becomes final, manufacturers of a PTCA catheter would pay a user fee of $4,007 for a 510(k) submission in FY 2010. While we do not have data to estimate the cost of preparing a 510(k) submission, several different factors indicate that it would be less than the cost of a PMA. For example, a firm does not have to submit manufacturing information in its 510(k), which is required for a PMA application, thereby reducing the burden and documentation needed. Given the ability to evaluate nonclinical testing in a direct comparison to a predicate device in a 510(k), FDA anticipates that most new PTCA catheters will not require clinical data to support 510(k) clearance, whereas all PMAs have to include some form of clinical data to support PMA approval. This difference will result in a significant reduction in cost for the device manufacturer. A PMA also requires the sponsor to prepare a draft summary of safety and effectiveness document, which is not required for a 510(k).

Based on the most recent 5 years, FDA estimates the following annual number of submissions received for PTCA catheters: 15 "30-day Notice" PMA supplements, 1 "Normal 180-day Track" PMA supplement, and 2 "Real-Time Process" PMA supplements. (Note: FDA has not received any "Panel-Track" supplements or original PMA submissions for this device in the past 5 years.) A "30-day Notice" is submitted for changes to a manufacturing process or method and assessed a user fee of $3,485 in FY 2010. When reclassification is final, these types of changes will not require clearance prior to the firm making the change in the majority of cases. Modifications to the method of manufacture of a device could require submission of a 510(k) if the changes could significantly affect the safety or effectiveness of the device, such as those that would currently require a "Real-Time Process" or "Panel-Track" PMA supplement. Based on FDA's experience, submission of a 510(k) for a modification to the method of manufacturing would be rare.

In summary, this device reclassification would reduce the existing burden on manufacturers of PTCA catheters. The application of class II (with special controls) requirements would be consistent with the principle of applying the least degree of regulatory control necessary to provide reasonable assurance of safety and effectiveness.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe *** a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain state requirements "different from or in addition to" certain Federal requirements applicable to devices. (See section 512 of the act (21 U.S.C. 360k); *Medtronic* v. *Lohr*, 518 U.S. 470 (1996); *Riegel* v. *Medtronic*, 128 S. Ct. 999 (2008)). The special controls established by this final rule create "requirements" for specific medical devices under 21 U.S.C. 360k, even though product sponsors have some flexibility in how they meet those requirements. *Papike* v. *Tambrands, Inc.*, 107 F.3d 737, 740–42 (9th Cir. 1997).

IX. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act of 1995 is not required. Elsewhere in this issue of the **Federal Register**, FDA is issuing a notice announcing the guidance for the final rule. This guidance, "Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters," references previously approved collections of information found in FDA regulations.

List of Subjects in 21 CFR Part 870

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 870.5100 is added to subpart F to read as follows:

§ 870.5100 Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheter.

(a) *Standard PTCA Catheter*—(1) *Identification.* A PTCA catheter is a device that operates on the principle of hydraulic pressurization applied through an inflatable balloon attached to the distal end. A PTCA balloon catheter has a single or double lumen shaft. The catheter features a balloon of appropriate compliance for the clinical application, constructed from a polymer. The balloon is designed to uniformly expand to a specified diameter and length at a specific pressure as labeled, with well characterized rates of inflation and deflation and a defined burst pressure. The device generally features a type of radiographic marker to facilitate fluoroscopic visualization of the balloon during use. A PTCA catheter is intended for balloon dilatation of a hemodynamically significant coronary artery or bypass graft stenosis in patients evidencing coronary ischemia for the purpose of improving myocardial perfusion. A PTCA catheter may also be intended for the treatment of acute myocardial infarction; treatment of in-stent restenosis (ISR) and/or post-deployment stent expansion.

(2) *Classification.* Class II (special controls). The special control for this device is "Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters." See § 870.1(e) for the availability of this guidance document.

(b) *Cutting/scoring PTCA Catheter*—(1) *Identification.* A cutting/scoring PTCA catheter is a balloon-tipped catheter with cutting/scoring elements attached, which is used in those circumstances where a high pressure balloon resistant lesion is encountered. A cutting/scoring PTCA catheter is intended for the treatment of hemodynamically significant coronary artery stenosis for the purpose of improving myocardial perfusion. A cutting/scoring PTCA catheter may also be indicated for use in complex type C lesions or for the treatment of in-stent restenosis.

(2) *Classification.* Class III (premarket approval). As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 870.3.

Dated: August 31, 2010.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–22304 Filed 9–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN54

Diseases Associated With Exposure to Certain Herbicide Agents (Hairy Cell Leukemia and Other Chronic B-Cell Leukemias, Parkinson's Disease and Ischemic Heart Disease); Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) published in the **Federal Register** on August 31, 2010, a document amending the adjudication regulations concerning the presumptive service connection for certain diseases based upon the most recent National Academy of Sciences Institute of Medicine committee report, Veterans and Agent Orange: Update 2008. In the preamble of that document, VA inadvertently included an incorrect Web site address. This document corrects the Web site address.

DATES: *Effective Date:* This correction is effective September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Janet Coleman, Office of Regulation Policy and Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–4902 (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: On August 31, 2010, VA published in the **Federal Register** (75 FR 53202), an amendment to 38 CFR 3.309 to add hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease and ischemic heart disease to the list of diseases subject to presumptive service connection based on herbicide exposure. On page 53215 of that document, in the third column, second paragraph, we inadvertently provided a Web site of: "*http://vaww1.va.gov/ORPM/FY_2010_Published_VA_Regulations.asp*", which is corrected to read: "*http://www1.va.gov/ORPM/FY_2010_Published_VA_Regulations.asp*".

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: September 2, 2010.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2010–22281 Filed 9–7–10; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH95

Medical; Nonsubstantive Miscellaneous Changes; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: The Department of Veterans Affairs (VA) published a final rule in the **Federal Register** on May 13, 1996 (61 FR 21964), amending its medical regulations in 38 CFR part 17 by making a number of nonsubstantive changes. Specifically, section numbers were redesignated, redundant and obsolete material was removed, certain position and organizational titles were changed, and material previously deleted was restored. The document contained an error in an amendatory instruction. We removed portions of § 17.31 and inadvertently redesignated § 17.31(b)(5) as the new § 17.31, creating two sections for § 17.31. This document will correct that error by removing the second, obsolete § 17.31.

DATES: *Effective Date:* September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Director of Regulatory Affairs (107B), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461–7633. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 13, 1996, VA published a final rule in the **Federal Register** (61 FR 21964) amending its medical regulations in 38 CFR part 17 by making a number of nonsubstantive changes. In the document, we removed § 17.31 (a), (b) introductory text and (b)(1) through (b)(4), (b)(6), (b)(7), and (c), leaving (b)(5) and (d). Inadvertenly, we then redesignated § 17.31(b)(5) as § 17.31, creating a second § 17.31. The second § 17.31 is obsolete. This document corrects the error by removing the second § 17.31 from 38 CFR part 17.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved:

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reason set out in the preamble, VA is correcting 38 CFR part 17 as follows.

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

■ 2. In part 17, remove the second § 17.31.

[FR Doc. 2010–22252 Filed 9–7–10; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R03–OAR–2010–0431; FRL–9197–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to extend the attainment date from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area, which is classified as moderate for the 1997 8-hour ozone national ambient air quality standard (NAAQS). In the direct final rule published on July 23, 2010, we stated that if we received any adverse comments by August 23, 2010, the rule would be withdrawn and would not take effect. EPA received an adverse comment within the comment period. EPA will address the comment received in a subsequent final action based upon the proposed action also published on July 23, 2010 (75 FR 43114). EPA will not institute a second comment period on this action.

DATES: *Effective Date:* The direct final rule is withdrawn as of September 8, 2010.

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

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 18, 2010.

Shawn M. Garvin,

Regional Administrator, Region III.

■ Accordingly, the amendments to § 81.321, published in the direct final rule on July 23, 2010 (75 FR 43069), are withdrawn as of September 8, 2010.

[FR Doc. 2010–22344 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–9197–6]

Ocean Dumping; Guam Ocean Dredged Material Disposal Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is designating the Guam Deep Ocean Disposal Site (G–DODS) as a permanent ocean dredged material disposal site (ODMDS) located offshore of Guam. Dredging is essential for maintaining safe navigation at port and naval facilities in Apra Harbor and other locations around Guam. Beneficial re-use of dredged material (*e.g.,* for habitat creation, construction material, or landfill cover) is preferred over ocean disposal. However, not all dredged materials are suitable for beneficial re-use, and not all suitable materials can be re-used or stockpiled for future use given costs, logistical constraints, and capacity of existing land disposal or re-handling sites. Therefore, there is a need to designate a permanent ODMDS offshore of Guam. Disposal operations at the site will be limited to a maximum of 1 million cubic yards (764,555 cubic meters) per calendar year and must be conducted in accordance with the Site Management and Monitoring Plan and any project-specific permit conditions. The designated ODMDS will be monitored periodically to ensure that the site operates as expected.

DATES: Effective October 8, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ota, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR–8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3476 or FAX: (415) 947–3537 or E-mail: *ota.allan@epa.gov.*

SUPPLEMENTARY INFORMATION: The supporting document for this site designation is the Final Environmental Impact Statement for the Designation of an Ocean Dredged Material Disposal Site Offshore of Guam. This document is available for public inspection at the following locations:

1. Guam EPA's Main Office, 17–3304 Mariner Avenue, Tiyan, Guam 96913.

2. Nieves M. Flores Memorial Public Library, 254 Martyr Street, Hagatna, Guam 96910.

3. Barrigada Public Library, 177 San Roque Drive, Barrigada, Guam 96913.

4. Dededo Public Library, 283 West Santa Barbara Avenue, Dededo, Guam 96929.

5. Maria R. Aguigui Memorial Library (Agat Public Library), 376 Cruz Avenue, Guam 96915.

6. Rosa Aguigui Reyes Memorial Library (Merizo Public Library), 376 Cruz Avenue, Merizo, Guam 96915.

7. Yona Public Library, 265 Sister Mary Eucharita Drive, Yona, Guam 96915.

8. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105.

9. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW., Washington, DC 20460.

10. EPA Web site: *http://www.epa.gov/region9/water/dredging/index.html.*

A. Potentially Affected Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the G–DODS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Final Rule would be primarily of relevance to parties of the island of Guam seeking permits from the USACE to transport dredged material for the purpose of disposal into ocean waters at the G–DODS, as well as the USACE itself (when proposing to dispose of dredged material at the G–DODS). Potentially affected categories and entities seeking to use the G–DODS and thus subject to this Rule include:

Category	Examples of potentially affected entities
Industry and General Public	• Ports. • Marinas and Harbors. • Shipyards and Marine Repair Facilities. • Berth owners.
State, local and Tribal governments	• Governments owning and/or responsible for ports, harbors, and/or berths. • Government agencies requiring disposal of dredged material associated with public works projects.
Federal government	• USACE Civil Works and O & M projects. • Other Federal agencies, including the Department of Defense.

This table lists the types of entities that EPA is now aware potentially could be affected. EPA notes, however, that nothing in this Rule alters in any way the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization may be potentially affected by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the G–DODS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA; 33 U.S.C. 1401 *et seq.*). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under Section 102 of MPRSA, EPA has the responsibility for designating an acceptable location for the ODMDS. With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in Title 40 of the Code of Federal Regulations part 227 (40 CFR part 227).

It is EPA's policy to publish an EIS for all ODMDS designations (**Federal Register**, Volume 63, Page 58045 [63 FR 58045], October 1998). A site designation EIS is a formal evaluation of alternative sites which examines the potential environmental impacts associated with disposal of dredged material at various locations. The EIS must first demonstrate the need for the ODMDS designation action (40 CFR 6.203(a) and 40 CFR 1502.13) by describing available or potential aquatic and non-aquatic (*i.e.,* land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through the Zone of Siting Feasibility (ZSF) process. Potential alternative sites are then evaluated using EPA's ocean disposal criteria at 40 CFR part 228 and compared in the EIS. Of the sites which satisfy these criteria, the site which best complies with them is selected as the preferred alternative for formal designation through rulemaking published in the **Federal Register** (FR).

Historically, dredged material generated around Guam by the Navy and the Port Authority of Guam (PAG) has either been placed in upland dewatering/disposal sites or beneficially used. To date these have been the only management options for dredged material. The anticipated volume of dredged material generated around Guam over the next 30 years would exceed the capacity of known or existing stockpile or beneficial use options. Assuming all existing upland dewatering facilities are used and all known beneficial use options are fully implemented, there would still be an excess of dredged material to be managed. This need for additional dredged material disposal capacity would be exacerbated by the separately-proposed increase in military presence on Guam, which could include extensive Navy and PAG navigation improvements. An ODMDS provides an important management option for dredged material that is suitable and non-toxic, but for which other management options are not practical. The purpose of this action is to ensure that adequate, environmentally-acceptable ocean disposal site capacity, in conjunction with other management options including upland disposal and beneficial reuse, is available for suitable dredged material generated from Apra Harbor and other locations on and around Guam.

Formal designation of an ODMDS does not constitute approval of dredged material for ocean disposal. Instead, decisions to allow ocean disposal are made on a case-by-case basis through the MPRSA Section 103 permitting process, resulting in a USACE permit or its equivalent process for USACE's Civil Works projects. For every project, the permitting process includes evaluating the need for ocean disposal and suitability of the proposed dredged material. Even when alternatives, including beneficial reuse, are not practicable, dredged material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (40 CFR parts 225 and 227), as determined from physical, chemical, and bioassay/bioaccumulation tests. Only clean non-

toxic dredged material as determined under national sediment testing protocols (EPA and USACE 1991) is acceptable for ocean disposal. This ocean disposal site designation has been prepared pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA) and is based on EPA's general and specific criteria as evaluated in the March 2010 "Final Environmental Impact Statement for Designation of an Ocean Dredged Material Disposal Site Offshore of Guam" (Final EIS).

C. Disposal Site Location

EPA has determined that the Northwest Alternative identified in the Final EIS is the environmentally preferred site, and this action designates the G–DODS as an ocean dredged material disposal site, located approximately 11 nautical miles (21 kilometers) west of Apra Harbor. The circular seafloor boundary of G–DODS is centered at 13° 35.500′ North latitude by 144° 28.733′ East longitude (North American Datum from 1983), with a diameter of 3 nautical miles (5.6 kilometers). However, all dredged material must be discharged within a smaller 3,280 foot (1,000 meter) diameter Surface Disposal Area (SDA) at the center of the overall site. The depth of the center of the site is 8,790 feet (2,680 meters).

D. Disposal Volume Limit

G–DODS is designated for a maximum annual dredged material disposal quantity of 1 million cubic yards (764,555 cubic meters) of suitable dredged material from Apra Harbor and other areas in and around Guam. This maximum volume, evaluated in the Final EIS, is based on historical dredging volumes from the local port districts, marinas and harbors, and Federal navigational channels, as well as estimates of future average annual dredging. However, EPA expects disposal volumes to be much less than the maximum in most years.

E. Site Management and Monitoring Plan

Verification that significant impacts do not occur outside of the disposal site boundaries will be demonstrated through implementation of the Site Management and Monitoring Plan (SMMP) developed as part of the action and included with the Final EIS. The main purpose of the SMMP is to provide a structured framework to ensure that dredged material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (Section 103(a) of the MPRSA). Three main objectives for management of the G–DODS are: (1) Protection of the marine environment; (2) beneficial use of dredged material whenever practical; and (3) documentation of disposal activities at the ODMDS. The SMMP will be reviewed periodically in combination with review of site monitoring data, and the SMMP may be updated as necessary.

The EPA and USACE Honolulu District personnel will achieve these objectives by jointly administering the following activities: (1) Regulation and administration of ocean disposal permits; (2) development and maintenance of a site monitoring program; (3) evaluation of permit compliance and monitoring results; and (4) maintenance of dredged material testing and site monitoring records to insure compliance with annual disposal volume targets and to facilitate future revisions to the SMMP.

The SMMP includes periodic physical monitoring to confirm that disposal material is deposited generally within the seafloor disposal boundary, as well as chemical monitoring to confirm that the sediment actually disposed at the site is in fact suitable (is consistent with the pre-disposal testing results). Other activities implemented through the SMMP to achieve these objectives include: (1) Regulating quantities and types of material to be disposed, including the time, rates, and methods of disposal; and (2) recommending changes to site use requirements, including disposal amounts or timing, based on periodic evaluation of site monitoring results.

F. Ocean Disposal Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)).

General Selection Criteria

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

The ZSF specifically screened the marine environment to avoid areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. The alternatives evaluated in the Final EIS each avoid such areas to the maximum extent practicable.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

Both alternative site boundaries are located sufficiently from shore (minimum 11 nautical miles [21 kilometers]) and from geographically limited fishing areas or other sensitive fishery resources to allow water quality perturbations caused by dispersion of disposal material to be reduced to ambient conditions before reaching environmentally sensitive areas.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

The interim ODMDS established for Guam does not meet current EPA criteria. It was never used and the designation was terminated.

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

The size and shape of the G–DODS is the minimum necessary to limit environmental impacts to the surrounding area and facilitate surveillance and monitoring operations, determined by computer modeling as described in the Final EIS. In addition, all dredged material discharge must take place within a smaller 3,280 foot (1,000 meter) diameter Surface Disposal Area (SDA) at the center of the overall site.

5. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used.

The island of Guam is volcanic and not part of a continental land mass and does not have a continental shelf. In the

absence of a shelf break, continental shelf can be defined as submerged land between shoreline and depth of 656 ft (200 m). On Guam, this typically occurs within 1 nautical mile (1.9 kilometers) of shore. The slope tends to increase rapidly offshore of Guam and depths can reach 6,000 ft (1.829 km) within 3 nm (5.6 km) (Weston Solutions and Belt Collins 2006). The center point of G–DODS is well beyond the continental shelf, 11 nautical miles (21 kilometers) from the shoreline. No ocean disposal sites have been used for Guam dredging projects.

Specific Selection Criteria

1. Geographical position, depth of water, bottom topography, and distance from the coast.

Centered at 13° 35.500′ N. and 144° 28.733′ E. and 11.1 nm (20.6 km) from Apra Harbor. The bottom topography at the site is essentially flat and the depth at the center of the site is 8,790 ft (2,680 m).

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

Due to the marine open water locale of this site, the presence of aerial, pelagic, or benthic living resources is likely within these areas. However, the site location, water depth and sparse biological communities would minimize any potential impacts to pelagic and benthic resources.

3. Location in relation to beaches and other amenity areas.

The site is greater than 8.0 nm (14.8 km) from the jurisdictional 3nm coastal zone boundary and unlikely to interfere with coastal amenities. This site is not visible from shore. No adverse impacts from dredged material disposal operations are expected on these amenity areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any.

Only suitable dredged material may be disposed at the site—no dumping of toxic materials or industrial or municipal waste would be allowed. Dredged material proposed for ocean disposal is subject to strict testing requirements established by the EPA and USACE, and only clean (non-toxic) dredged materials are allowed to be disposed at the G–DODS. Most dredged material to be disposed will likely be fine-grained material (clays and silts) originating from the Inner Apra Harbor area, and coarser-grained material (sands and gravels) originating from the Outer Apra Harbor area. Corals, boulders, and other larger sized materials are not allowed to be disposed at the G–DODS. Maximum annual dredged material volumes would be set at 1,000,000 cy (764,555 m^3). Dredged material is expected to be released from split hull barges.

5. Feasibility of surveillance and monitoring.

EPA (and USACE for Federal projects in consultation with EPA) is responsible for site and compliance monitoring. USCG is responsible for vessel traffic-related monitoring. Monitoring of the disposal site is feasible and facilitated through use of a satellite-based remote tracking system as specified in the SMMP.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Oceanographic current velocities are greatest at the surface due to atmospheric circulation (*e.g.,* wind-driven) events, while intermediate and bottom layer currents are much slower, driven by thermohaline circulation and influenced by tidal circulation. Computer modeling, taking into account all current depths and speeds, results in a 2.98 mile diameter footprint of deposits greater than 1 cm.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

No evidence of previous disposal activities was observed during field reconnaissance and there are no designated discharge areas in the vicinity. No interactions with other discharges are anticipated due to the distances from existing discharge points located on the island of Guam.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.

Minor short-term interferences with commercial and recreational boat traffic may occur due to the transport of dredged material along established shipping lanes to and from G–DODS. There are no oil or other mineral extraction platforms offshore of Guam. The site has not been identified as an area of special scientific importance. There are no fish/shellfish culture enterprises near the site, and transportation to the site avoids any fish aggregation devices (FADs). There may be recreational vessels passing through the site, but the area is not a recreational destination.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

Water quality is excellent with no evidence of degradation. Sediment quality is also typical of unaffected deep-ocean environments removed from pollutant sources. Baseline studies showed no significant benthic fish or shellfish resources in the area.

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

The potential that any transported nuisance species would survive at the ODMDS is low due to depth and temperature differences between the deep ocean disposal site and the likely sources of dredged material in the harbors and other shallower areas in and around Guam.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

No culturally significant natural or cultural features, including shipwrecks, were identified in the vicinity of the ODMDS.

G. Responses to Comments

EPA received concurrences or lack of objection responses to the ocean disposal site designation Final EIS and Proposed Rule from several Federal and Guam agencies, including: U.S. Department of the Interior; National Park Service; U.S. Fish and Wildlife Service (USFWS); National Marine Fisheries Service (NMFS); U.S. Army Corps of Engineers (USACE); Guam Bureau of Statistics and Plans; and Guam EPA. Those comments require no response.

EPA also received 14 comment letters or e-mails on the Final EIS and Proposed Rule from 8 other entities and individuals. Taken together, these letters and e-mails generated approximately 90 individual comments. Many of these comments were similar to each other, and we have grouped them into 12 categories for purposes of responding to them here.

The first three categories of comments below relate to issues independent of this ocean disposal site designation action, and are only briefly addressed. The remaining comment categories are relevant to the scope of this action, and therefore are responded to here.

1. Concerns About Military Buildup on Guam

Several comments expressed concerns about effects of the proposed military buildup on Guam, including Environmental Justice issues, lack of trust of the military or other Federal regulatory agencies including EPA, and ideas for alternative expansion plans

that could reduce buildup-related dredging.

At the time of this ocean disposal site designation action, a separate EIS addressing the proposed military buildup on Guam was also in circulation. Although this ocean disposal site designation action takes into account potential ocean disposal needs of the possible military buildup, the two processes are independent. Guam has had no ocean disposal option available since 1997. EPA determined that there is a long-term need for an ocean disposal site whether or not the military buildup occurs, based on the need to support the Naval and commercial port facilities that currently exist. Effects of the proposed military buildup itself are outside the scope of this action, and such comments are not further addressed here.

2. Concerns About the Impacts of Dredging

Several comments were received concerning the direct impacts of dredging activities, as separate from ocean disposal. In particular, comments about dredging itself were related to: potential impacts to coral and other sensitive species and habitats, including cumulative impacts; the need for Best Management Practices (BMPs) to minimize direct impacts; and the need to mitigate for impacts of dredging.

The potential effects of each proposed dredging project will vary, and appropriate BMPs or other permit conditions must be determined on a case-by-case basis. Coral reef and other resource losses due to dredging, as well as measures to mitigate for such losses, are also evaluated during the USACE permitting process for individual projects. The designation of an ocean disposal site is a separate action from any decisions to permit or to not permit individual dredging projects. Since dredging-related effects are outside the scope of this ocean disposal site designation action, such comments are not further addressed here.

3. Concerns About Minimizing Ocean Disposal by Maximizing Beneficial Reuse

One comment expressed concern that dredged material which could be reused should not be considered for ocean disposal simply because the timing of the dredging project does not match that of the reuse project.

Disposal or reuse alternatives that could practicably meet the purpose and need of a dredging project must be evaluated at the time of project-specific permitting. Timing and logistics can affect the practicability of dredged material disposal or reuse alternatives. One option is to stockpile dredged material that is suitable for later reuse, and EPA has encouraged creation or coordinated management of stockpile capacity on Guam for just this purpose. For an individual project, ocean disposal is permitted only when other alternatives are not practicable. However, determining the availability of alternatives for individual projects is independent of this ocean disposal site designation action, and such comments are not further addressed here.

One comment expressed concern that dredged material found to be unsuitable for ocean disposal should also be considered unsuitable for any reuse on Guam, and should instead be removed from the island.

Suitability requirements for ocean disposal of dredged material are both strict, and specific to the contaminant exposure pathways at the ocean disposal site. Dredged material found unsuitable for ocean disposal may often be appropriate for placement or reuse in other environments where exposure pathways are different, provided that those pathways can be controlled and managed to avoid significant impacts. Specifically, dredged material that is not suitable for ocean disposal can often appropriately be included in otherwise approved projects where the material will be isolated from resources of concern; for example, in engineered fills, or as landfill daily cover. The need for any particular contaminant control or containment measures would be determined on a case-by-case basis. However, determining the appropriate disposal requirements for individual projects with ocean-unsuitable material is independent of this ocean disposal site designation action, and such comments are not further addressed here.

4. Adequacy of the Final EIS

Several comments focused on perceived inadequacies in the Final EIS evaluations that they viewed as so significant that a complete re-write and re-circulation of the EIS was needed.

Perceived inadequacies regarding different individual topics are addressed below. In each case, EPA disagrees that the Final EIS evaluations are inadequate for NEPA or MPRSA disposal site designation purposes, and has determined that there is no need to re-write and re-circulate the EIS.

5. Preference for Other Locations

Some comments questioned the distance constraints used in the Final EIS, and recommended that disposal sites be prohibited within 30 nautical miles of western Guam and 15 nautical miles around seamounts.

The disposal site designation process included a Zone of Siting Feasibility (ZSF) evaluation that identified constraints on where a multi-user disposal site could be considered, including the economic transport distance (*see* Final EIS Section 2.2.1–2.2.4). The economic transport distance takes into account not just major potential construction projects such as may be proposed by the U.S. Navy or the Port Authority of Guam, but also other potential projects such as maintenance dredging of marinas outside of Apra Harbor where smaller commercial and recreational vessels are berthed. In order to accommodate such smaller maintenance dredging projects, the ZSF identified 18 nautical miles (nm) as the economically feasible transport distance. Within this radius, sites were identified and evaluated in detail in the Final EIS. Based on that evaluation, EPA determined that significant impacts would not occur at either alternative site. Since there would be no significant impacts (including to seamounts and related resources) at these sites within the economic haul distance, there is no need to prohibit disposal site designation there or to select a different (arbitrary) distance within which to consider other possible locations.

6. Preference for the No Action Alternative

Some comments expressed preference for the No Action Alternative (that an ocean disposal site not be designated at either of the alternative locations evaluated in the Final EIS).

Guam has had no ocean disposal option available since 1997. EPA determined that there is a need for an ocean disposal site to provide an additional option for the management of suitable material dredged from Guam and surrounding waters. This is based on the long-term need to support the Naval and commercial port facilities that currently exist, independent of potential military and port expansion proposals (*see* Final EIS Section 1.3). The No Action Alternative would not meet the purpose and need for this action. Furthermore, the evaluation contained in the Final EIS and reflected in this rulemaking action determined that designation and use of the disposal site in compliance with the SMMP would not result in significant adverse direct or cumulative effects.

7. Computer Modeling

One comment expressed concern that the Final EIS evaluations were based on

the same kinds of computer models that erroneously demonstrated the safety of oil drilling in the Gulf of Mexico and hull integrity of the Exxon-Valdez oil tanker. Modeling should not just include the ocean floor, but also the water column and the possibility of a catastrophic accident.

Using established and verified computer models, the Final EIS specifically evaluated suspended sediment plumes in the water column and sediment deposition on the seafloor associated with dredged material disposal (*see* Final EIS Section 4.1.3–4.1.4). (Oil has different buoyancy properties than dredged material, and different models would be used to evaluate oil spills.) Dredged material modeling considered the maximum volume disposal scenario developed from the ZSF process, and included both increased current speeds and reversed current directions to simulate the most severe El Niño and La Niña conditions expected (*see* Final EIS Section 3.1.2, 4.1.3–4.1.4). However, these models are not designed, and were not used, to consider other issues such as the possibility of accidents. Vessel-related accidents are always a risk during open ocean operations. The Site Management and Monitoring Plan (SMMP, included as Final EIS Appendix C) mitigates the potential for accidents during disposal operations by allowing operations only when weather and sea-state conditions are conducive with safe navigation, by requiring that transportation to the disposal site must be via the established vessel traffic lanes, and by requiring that only one disposal vessel at a time is allowed to be within the disposal area. Furthermore, vessel movements in the most congested area entering and exiting Apra Harbor are highly regulated. Vessels must contact Port Authority vessel control, and if a vessel movement is to or from Naval areas the vessel must also contact Navy vessel control. In general only one vessel is allowed to transit the entrance channel at a time.

Some comments stated the concern that the disposal modeling was based on inadequate collection of oceanographic data for the area.

EPA generally requires that a full year of continuous oceanographic conditions (current speed and direction at different depths, *etc.*) be collected in the vicinity of proposed ocean disposal sites, in order to capture the range of seasonal variability that occurs. This information is then used as direct input to the plume dispersion and seafloor deposition computer modeling. In this case, data were collected continuously throughout 2008 from two separate current meter arrays offshore of Guam in the vicinity of the proposed disposal site. It is recognized that the waters surrounding the island of Guam are subject to periodic El Niño and La Niña conditions, as well as typhoons, that can substantially affect current speed and direction (primarily in the surface water layer, down to a few hundred meters in depth.) Therefore the data collected in 2008 does not necessarily represent the full range of conditions that may occur in the area. For this reason, the Final EIS included additional modeling using both significantly accelerated current speeds and reversal in surface current direction to simulate the most severe El Niño and La Niña conditions expected (*see* Final EIS Section 4.1.3–4.1.4). (Typhoon conditions were not specifically modeled, because disposal operations are prohibited in weather conditions and sea states that are unsafe for navigation or that would risk spilling dredged material during transit.) The Final EIS evaluation concluded that even under severe El Niño or La Niña conditions, and even under the highly unlikely presumption that such extreme surface current conditions were to persist throughout the entire year, suspended sediment plumes would still dissipate to background concentrations within the disposal site boundary. It also showed that seafloor deposits would not be significantly different. This is largely due to the fact that the slow, deep subsurface currents (which have the predominant effect on overall deposition) are not affected by even severe surface current anomalies.

8. Environmental Effects of Disposal

Some comments expressed the belief that plumes of suspended sediments in the surface waters would be more persistent than described in the Final EIS, especially if the maximum one million cubic yards were really disposed in a one-year period.

As discussed in the Final EIS, computer modeling indicated that surface water plumes from individual disposal events will dissipate to background concentrations within 4 hours of disposal and within the boundary of the disposal site (*see* Final EIS Section 4.1.3). Although the Final EIS discussed an average of 1 disposal event per day under the maximum volume scenario of one million cubic yards in one year, it is conceivable that during occasional periods of heavy site use more than one disposal event may occur in a day. In such cases, a new disposal event could occur before the suspended sediment plume from the previous disposal event has fully dissipated. However these individual plumes, under the influence of surface currents and gravity, would each still be expected to dissipate to background levels within the disposal site boundary even under extreme current conditions. (This conclusion is consistent with experience at other open ocean disposal sites, including direct monitoring of plume dispersion following disposal operations.)

Some comments stated a concern that adverse impacts may occur outside the disposal site (i.e. to the marine ecosystem, to recruitment of organisms back to Guam, and to fishing opportunities around Guam more broadly) because planktonic organisms including coral larvae, and larval or juvenile reef and pelagic fishes, as well as bait fish that attract larger pelagic fish, may be present at the disposal site and be affected by disposal operations.

The Final EIS acknowledged that planktonic larvae, including coral larvae as well as larvae and juveniles of both pelagic and reef fishes, can be found throughout the 200-mile Exclusive Economic Zone (EEZ) surrounding Guam (*see* Final EIS Section 3.2.3). However, the Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (*see* Final EIS Sections 3.1.2–3.1.4). In the absence of persistent unique oceanographic or habitat characteristics, the overall distribution of planktonic and larval organisms (as well as bait fish feeding on them and larger pelagic fish attracted by bait fish) would be expected to be similar throughout the offshore waters west of Guam. Since the disposal site represents a very small proportion of those offshore waters (less than one percent of the area within the 18 nm ZSF economic feasibility distance, and still less of the area within the approximately 30 nm radius reported as being regularly utilized by fishers), no significant adverse effects are expected. In addition, planktonic larvae of coral and of reef fish that drift offshore to the ocean disposal site generally would not return to Guam to survive since the prevailing tradewind patterns and surface currents would continue to carry them even farther offshore most of the time (*see* Final EIS Sections 3.1.2 and 4.1.2). Finally, we are including a provision in the SMMP to prohibit disposal operations during the peak coral spawning period (an approximate six week period occurring between June and August each year), thus avoiding the time when larvae of these species would be most concentrated. For these reasons, offshore disposal operations are not expected to have any significant

effect on recruitment of coral or coral reef fish on Guam, or to the broader ecosystem or fishery resources utilized by fishers.

Some comments noted that reef fishes will sometimes cross deep ocean areas (for example between islands, reefs or seamounts) and may be affected by disposal.

Although reef fishes may cross deep areas, there are no appropriate island, reef, or seamount habitats in the direction of or in the vicinity of the disposal site for reef fish originating from nearshore areas around Guam. The peak of the Perez Bank seamount, west of the disposal site, is approximately 800 m deep at its shallowest (*see* Final EIS Section 3.1.5) and would not provide suitable habitat for reef fish species. Individual reef fishes transiting through the deep waters west of Guam would be as likely to be found anywhere offshore as within the disposal site, which represents a very small proportion (less than one percent) of such waters. Therefore, the potential impact of dredged material disposal operations is expected to be insignificant.

One comment stated that invasive or non-native species in dredged material might drift back to Guam.

Prevailing trade wind patterns and surface currents at the disposal site would generally carry any small organisms present in the suspended sediment plume even farther offshore most of the time (*see* Final EIS Sections 3.1.2 and 4.1.2). Larger organisms present would descend with the mass of dredged material to the seafloor. The seafloor at the disposal site is very deep (over 8,000 feet), and (as evidenced by sediment characteristics and deep water current speeds—*see* Final EIS Sections 3.1.2 and 3.1.4) is in a depositional environment where the sediment would not become resuspended or migrate toward shore. Future disposed sediments would tend to cover previously placed material over time. In addition, only non-native species already brought to Guam by other mechanisms—*i.e.,* in vessel ballast water—would be present, so disposal operations would not introduce new species. For these reasons ocean disposal of dredged material from Guam would not be expected to increase either the presence or the spread of non-native species.

Some comments expressed concern that consultations with NMFS (regarding endangered species, and regarding Essential Fish Habitat) were inadequate because coordination should also have occurred directly with the Western Pacific Regional Fishery Management Council (WPRFMC).

The required consultations were completed with NMFS and USFWS with regard to seabirds, marine mammals, threatened and endangered species, fisheries, and essential fish habitat. These agencies provided recommendations at the draft EIS stage, which were incorporated into the Final EIS. No significant resource issues were raised by these agencies over the Final EIS or Proposed Rule.

Some comments stated the Final EIS evaluation included insufficient information on the ranges and/or timing of important marine species—including sea turtles, and spinner and bottlenose dolphins—and failed to evaluate potential impacts of disposal operations on them.

EPA acknowledges that there is limited information for a number of species. Nevertheless, the Final EIS reflects the current scientific knowledge and reports applicable to the region, including the 2007 Mariana Islands Sea Turtle and Cetacean Survey. The Final EIS acknowledged that spinner and bottlenose dolphins, as well as several species of sea turtles, are expected to occur regularly throughout the region (*see* Final EIS Section 3.2.5). However, the Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (*see* Final EIS Sections 3.1.2–3.1.4). In the absence of persistent unique oceanographic or habitat characteristics, the overall distribution of marine mammals and sea turtles (as well as their pelagic prey organisms) would be expected to be similar throughout the offshore waters west of Guam. Furthermore, the disposal plume in the water column will be temporary following individual disposal events, and will dissipate to background levels within the disposal site boundary even assuming the maximum disposal volume scenario and severe El Niño or La Niña conditions (*see* Final EIS Section 4.1.3). Since the disposal site represents a very small proportion (less than one percent) of the offshore waters, and since disposal effects will be limited and temporary even within the disposal site, the potential impact of dredged material disposal operations on marine mammals and sea turtles is expected to be insignificant.

One comment expressed concern that experience and knowledge of conditions in the deep ocean environment elsewhere are not necessarily representative of the tropical deep ocean environment off Guam.

Although temperate and tropical ecosystems are different in many aspects in the surface and coastal waters, the physical oceanographic conditions of the deep ocean are fairly consistent throughout the world. Nevertheless, the Final EIS evaluation did not rely exclusively on knowledge of deep ocean environmental conditions elsewhere. Extensive site-specific oceanographic and biological baseline studies were conducted for the Final EIS (*see* Final EIS Sections 3.1.2–3.1.6 and 3.2.2–3.2.3), focusing on critical information gaps. The resulting data greatly added to the available information about conditions offshore of western Guam, and allowed an adequate assessment of the potential impacts of ocean disposal activities. EPA's published site selection criteria, and relevant monitoring experience at other deep ocean disposal sites, remain valid for the deep waters offshore of Guam.

One comment expressed concern that noise and disturbance caused by vessels has not been studied.

The ocean disposal site is located outside of, but immediately adjacent to established vessel traffic lanes. Vessels transporting dredged material to the disposal site must remain within the traffic lanes at all times during their approach to the site. The amount of disposal-related vessel traffic will be small in comparison to existing commercial vessel traffic in the area (*see* Final EIS Section 3.3.4), even without considering Naval vessel traffic. The Final EIS concluded that even at the worst-case annual disposal volume (an average of 1 disposal trip per day), only minor navigation-related cumulative impacts to fishing or other vessels would result (*see* Final EIS Section 4.4.3). Disposal volumes, and therefore disposal-related vessel traffic, are expected to be much less than this most of the time, and in most years. For these reasons EPA believes that ocean disposal site designation will not cause significant adverse impacts as a result of vessel disturbance or noise.

9. Socioeconomic, Cultural, or Environmental Justice Issues

Several comments criticized the Final EIS for not properly recognizing the character of the local fishery, noting that the majority of fishers participate in the troll fishery for pelagic species within 20–30 miles of the coastline along Guam's western seaboard where conditions are more consistently safe for fishing. A disposal site in these waters could therefore have larger effects on the fishing community than noted in the Final EIS.

The Final EIS acknowledged that the pelagic troll fishery is significant, and takes place throughout the waters offshore of Guam as anglers pursue several highly mobile species (*see* Final EIS Section 3.2.3). However, the fishery is not concentrated around the disposal site (*see* Final EIS Sections 3.2.3 and 4.3) and this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately around the disposal site. The Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (*see* Final EIS Sections 3.1.2–3.1.4). In the absence of persistent unique oceanographic or habitat characteristics in the vicinity, the overall distribution of planktonic and larval organisms, as well as bait fish feeding on them and larger pelagic fish attracted by bait fish, would be expected to be similar throughout the offshore waters west of Guam. Furthermore, suspended sediment plumes from disposal events are expected to quickly dissipate to background levels within the disposal site (*see* Final EIS Section 4.1.3). Following dissipation pelagic fishes or their prey would not necessarily avoid the area, and disposal operations are not expected to be so continuous or heavy that mobile fish species or their prey would avoid the area permanently. Since the disposal site represents a very small proportion of the offshore waters west of Guam (less than one percent of the area within the 18 nm ZSF economic feasibility distance, and still less of the area within the approximately 30 nm radius reported to be regularly utilized by anglers), and since disposal effects will be limited and temporary even within the disposal site, significant direct or cumulative impacts to the ocean ecosystem, including to pelagic fish species targeted by anglers, are not expected.

Several comments expressed concern that fishing would be prohibited around the disposal site and that, together with previous losses of pelagic fishing areas to military operations and the Mariana Trench Marine National Monument, any further losses would be unacceptable. A related concern was that the "*From the Reef to the Deep Blue Sea*" *program, which promotes conservation of coral reef fish species by providing the island community with alternative and more abundant pelagic fish, would be impacted by any decline in pelagic fish or restriction of traditional offshore fishing areas.*

EPA recognizes that fishing in some areas has become more difficult, or even off limits, as a result of other actions on and around Guam not related to this site designation. However this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately around the disposal site. In addition, since the Final EIS evaluation determined that no significant effect is expected to pelagic fish or the fishery targeting them, there should be no impact to Guam's "From the Reef to the Deep Blue Sea" program.

One comment noted that the Final EIS understated the economic value of the commercial fishery, and requested that EPA fund a baseline study of direct and indirect economic activity generated by fisheries on Guam, in order to assess economic impacts due to loss of fishing opportunities.

The Final EIS acknowledged that it is often difficult to distinguish between commercial, recreational, and other fishing activities conducted around Guam (*see* Final EIS Section 3.3.1). The direct value of strictly commercial fishery landings does not take into account the related economic benefit to supporting businesses. Nor does it reflect direct or indirect economic activity generated by non-commercial fishing, let alone cultural values associated with fishing on Guam. However, this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately around the disposal site. In addition, as discussed above, the Final EIS evaluation determined that no significant environmental effects are expected to pelagic fish or the fishery targeting them. For these reasons, EPA disagrees that there is a need to further quantify the direct and indirect economic activity generated by fishing on Guam.

Several comments expressed concern that the Final EIS downplayed the cultural importance of fishing and the supply of fresh fish (including for religious purposes). In particular, the loss of fishing opportunity would have a negative cultural impact on Guam.

The Final EIS acknowledged that fish, and fishing, are important cultural aspects of life for many residents of Guam (*see* Final EIS Section 3.3.1). However, as discussed above the fishery is not concentrated around the disposal site (*see* Final EIS Sections 3.2.3 and 4.3) and this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately around the disposal site. The Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (*see* Final EIS Sections 3.1.2–3.1.4). In the absence of unique oceanographic or habitat characteristics in the vicinity, the overall distribution of planktonic and larval organisms, as well as bait fish feeding on them and larger pelagic fish attracted by bait fish (and targeted by fishers), would be expected to be similar throughout the offshore waters west of Guam. Furthermore, suspended sediment plumes from disposal events are expected to quickly dissipate to background levels within the disposal site (*see* Final EIS Section 4.1.3). Following dissipation pelagic fishes or their prey would not necessarily avoid the area, and disposal operations are not expected to be so continuous or heavy that mobile fish species or their prey would avoid the area permanently. Since the disposal site represents a very small proportion (less than one percent) of the offshore waters and disposal effects will be limited and temporary even within the disposal site, significant direct or cumulative impacts to the ocean ecosystem, including to pelagic fish species targeted by fishers, are not expected. The Final EIS also noted that cumulatively there would be only minor potential for navigation-related impacts to fishing or other vessels, even during periods of maximum disposal activity (*see* Final EIS Section 4.4.3). Therefore EPA does not believe that designation of the ocean disposal site will have any significant effect on fishing, fishes themselves, or associated cultural aspects of life on Guam.

One comment argued that even though the economic impact threshold in Executive Order 12866 would not be exceeded, effects on the small island community of Guam would still be significant.

EPA recognizes that economic impacts far below the $100 million threshold in Executive Order 12866 could be "significant" to a small island community such as Guam's. However, the EIS process concluded that there would be no significant effects on Guam including to "the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities", because significant environmental effects are not expected and because the action does not prohibit or further limit fishing.

One comment stated that the site designation violates Executive Order 13132 on Federalism because it represents yet another Federal action imposed on Guam without local consent.

This action does not have federalism implications and does not violate Executive Order 13132. It does not have a direct effect on the government of Guam, on the relationship between the

national government and the government of Guam, or on the distribution of power and responsibilities among the various levels of government. The designated site is over 11 nautical miles offshore, outside of the jurisdiction of Guam agencies. Furthermore, EPA consulted directly with the Guam Bureau of Statistics and Plans and received their concurrence that the action is consistent with Guam's Coastal Management Program. Since this action only has the effect of providing an additional option for managing dredged material and setting a maximum annual ocean disposal volume limit, Executive Order 13132 does not apply.

10. Sediment Testing Issues

Some comments expressed concern about possible radiation releases in the past and the reliability of the Navy to report any releases in the future. They believed that EPA statements about radiation testing have been inconsistent, and recommended that EPA be clear about requiring that sediment core samples (rather than surface grab samples) be analyzed for radiation prior to approval of dredging and disposal operations.

For every dredging project area tested, sediments will be representatively sampled down to the proposed dredging depth (design depth) plus overdepth (which is typically 2 feet below the project's design depth), using coring equipment (not just surface grab samples), and tested in accordance with the EPA/USACE national Ocean Testing Manual. However, in response to these comments, sediment samples collected from dredging areas in Apra Harbor will be subjected to radiation analyses in addition to the other standard physical, chemical, and biological analyses.

One comment requested that dredged material sampling plans, testing results, and site monitoring information be made accessible to the public (without a FOIA request).

Proposed Sampling and Analysis Plans (SAPs) for dredging projects that include ocean disposal must be provided to EPA, USACE and appropriate Guam regulatory agencies for review and approval prior to testing. In addition, EPA intends to make publicly available (via the EPA Region 9 Web site) SAPs and subsequent results reports for dredging projects that include ocean disposal, as well as site monitoring results, once such reports are finalized.

11. Site Management and Monitoring Plan (SMMP) Issues

*One commenter was concerned that the language in Section 5.1.1 of the SMMP, which stated a number of permit requirements "may include the following * * *", implied important provisions might sometimes not be required in permits.*

EPA will revise this SMMP language to read: "shall include, but not be limited to, the following * * *"

One comment recommended that any disposal scow that has handled contaminated dredged material be required to be cleaned before loading clean material for discharge at the ocean disposal site.

EPA will add a requirement to this effect to the SMMP.

Some comments recommended that all dredging activities be prohibited at certain times, including during the peak coral spawning period, during seasonal appearance of harvested fish species, and west to east wind shifts.

Dredging operations on projects that include ocean disposal will not be allowed during the peak coral spawning period. (EPA generally agrees that any dredging in proximity to coral should not occur during this timeframe if at all possible; however, EPA does not have independent authority to require stoppage of dredging work on projects that do not include ocean disposal.) Different fish species are harvested at different times of the year, and there is no period during which disposal operations would avoid them all. However, based on the Final EIS conclusion that significant effects would not occur to these species, EPA has determined that no seasonal restriction on use of the disposal site is necessary. The Final EIS evaluations determined that disposal plumes would dissipate to background levels within the disposal site boundaries, even during current reversals and significant increases in surface current speed. Therefore EPA determined that timing restrictions to avoid wind and surface current shifts from west to east are also not needed.

One comment recommended that large pieces of coral debris, and especially live coral, be prohibited from ocean disposal.

EPA agrees that live coral should be salvaged for transplantation. Therefore we are adding a provision to the SMMP requiring mechanical dredging operations in areas that include live coral, coral rubble, rocks, or other large debris to utilize a metal grate (known as a grizzly) with no greater than 12-inch openings, through which the dredged material is passed as it is placed in disposal barges. Material retained on the grizzly must be removed and managed elsewhere; it may not be taken to the ocean disposal site.

One comment stated that in light of the lack of trust by the local community, the entire dredging and disposal process needs to be monitored by independent observers.

As stated in the Proposed Rule, the Final EIS evaluation determined that use of the disposal site would not be expected to result in long-term adverse environmental impact to the wide-ranging species of seabirds, pelagic fish, sea turtles or marine mammals in the region offshore of Guam. Therefore EPA has not included a requirement in the SMMP for independent on-board observers. However, the SMMP requires automated satellite and sensor-based monitoring of all transportation and disposal operations. In addition, the SMMP requires that scows must be inspected prior to each disposal trip, and certified as being in compliance with other SMMP specifications.

One comment recommended that disposal scow tracking capability be "real time" so that a disposal scow found to be losing material could be recalled prior to disposal.

Real time monitoring for leaks is not considered essential for long-term management of ocean disposal operations. First, personnel are not necessarily available to review tracking data for every trip in real time. More importantly, even if a leaking scow were to be identified while during transit, it would generally be environmentally preferable to allow the scow to complete that trip to the ocean disposal site rather than to return and release additional material in closer proximity to corals and other sensitive habitats. Also, in some conditions there can be vessel safety concerns involved in aborting a trip and turning around a loaded scow in the open ocean. Instead, the continuous tracking system required by EPA documents whether a substantial leak or spill has occurred during a trip, and transmits that data at the end of each trip. Disposal operations may not proceed if the required tracking system is not operational. If a leak or spill was detected, an e-mail alert is sent to all appropriate parties (including the permittee, the dredging contractor, EPA, USACE, and relevant Guam regulatory agencies), advising to check the Web site for that trip. This system provides for timely communication with the dredging project managers so that information about causes and remedies can be exchanged quickly. When necessary, EPA and USACE can require physical or operational changes be

made, or even that the scow in question be pulled immediately from service and not allowed to be used for disposal operations until repairs are completed and shown to be successful.

One comment recommended that site monitoring include the seafloor area surrounding the site itself, that monitoring also occur for the presence of pelagics and planktonic organisms including coral larvae in the water column, and that sediment traps should be deployed outside the disposal site to verify the dispersion modeling.

Both on-site and off-site stations will be included in benthic monitoring surveys. Sediment traps are not needed based on previous monitoring of deep ocean disposal operations, and because benthic surveys conducted under the SMMP will provide a more integrated, cumulative measure of the extent of dispersion and deposition. Water column monitoring for the presence of pelagic organisms, including coral larvae, is not necessary based on the Final EIS conclusion, discussed above, that although these organisms are expected to be present within the disposal site (just as they are present throughout the offshore waters west of Guam), significant impacts to their populations are not expected because disposal operations will be limited in area, extent and duration.

12. Compensatory Mitigation

Some comments requested specific compensatory mitigation for disposal site designation, including deployment of new Fish Aggregation Devices (FADs) as alternative fishing areas to mitigate for loss of fishing opportunity, and direct monetary compensation for anglers of $1.9 million per year for the life of the disposal site or a lump-sum payment of $50 million.

A broad range of impact avoidance and minimization measures are built into the site designation process itself, and additional avoidance and minimization measures have been incorporated into the SMMP. As noted above, fishing is not prohibited in or around the disposal site. The fishery is not concentrated around the disposal site (*see* Final EIS Sections 3.2.3 and 4.3). The Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (*see* Final EIS Sections 3.1.2–3.1.4). In the absence of unique oceanographic or habitat characteristics in the vicinity, the overall distribution of planktonic and larval organisms, as well as bait fish feeding on them and larger pelagic fish attracted by bait fish, would be expected to be similar throughout the offshore waters west of Guam. Furthermore, suspended sediment plumes from disposal events are expected to quickly dissipate to background levels within the disposal site (*see* Final EIS Section 4.1.3). Following dissipation pelagic fishes or their prey would not necessarily avoid the area, and disposal operations are not expected to be so continuous or heavy that mobile fish species or their prey would avoid the area permanently. Since the disposal site represents a very small proportion of the offshore waters targeted by anglers (less than one percent of the waters within 30 miles to the west of Guam) and disposal effects will be limited and temporary even within the disposal site, significant direct or cumulative impacts to the ocean ecosystem, including to pelagic fish species targeted by anglers, are not expected. EPA therefore disagrees that there is any further need for compensatory mitigation of the kinds recommended.

Some comments recommended that compensatory mitigation be required for any leakage or spills of dredged material outside the disposal site.

Leaking or spillage of material during transit to the disposal site is prohibited by the SMMP and any ocean disposal permits issued. Substantial mandatory compliance monitoring effort is directed at confirming that neither occurs. We have added a new provision to the SMMP specifying that if a disposal barge leaks or spills significantly during a trip to the disposal site, it may not be used on subsequent ocean disposal trips until approved again by EPA and USACE. EPA has substantial enforcement authority under the Marine Protection, Research, and Sanctuaries Act, and may also refer violators to the Department of Justice for civil or criminal prosecution if necessary. Enforcement actions or settlements can require restoration where possible (*e.g.,* in shallow water), in addition to monetary penalties.

H. Regulatory Requirements

1. Consistency With the Coastal Zone Management Act

Consistent with the Coastal Zone Management Act (CZMA), EPA prepared a Coastal Zone Consistency Determination (CZCD) document based on information presented in the site designation DEIS. The CZCD evaluated whether the action—permanent designation of G–DODS would be consistent with the provisions of the CZMA. The CZCD was formally submitted to the Bureau of Statistics and Planning (BSP, Guam's CZM agency) on July 24, 2009. The BSP staff concurred with EPA's CZCD. The Final Rule is consistent with the CZMA.

2. Endangered Species Act Consultation

During development of the site designation EIS, EPA consulted with the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to jeopardize the continued existence of any Federally listed species. This consultation process is fully documented in the site designation Final EIS. NOAA and FWS concluded that designation and use of the disposal site for disposal of dredged material meeting the criteria for ocean disposal would not jeopardize the continued existence of any Federally listed species.

I. Administrative Review

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Final Rule should have minimal impact on State, local or Tribal governments or communities. Consequently, EPA has determined that this Final Rule is not a "significant regulatory action" under the terms of Executive Order 12866.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* is intended to minimize the reporting and

recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and recordkeeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Final Rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a Final Rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Final Rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year.

This Final Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The Final Rule would only provide a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or Tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Final Rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This Final Rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13132 does not apply to this Final Rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This Final Rule does not have Tribal implications, as specified in Executive Order 13175. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13175 does not apply to this Final Rule.

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

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Final Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act

This Final Rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, EPA concluded that this Final Rule is not likely to have any adverse energy effects.

9. National Technology Transfer Advancement Act

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

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

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this Final Rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the disposal sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This Final Rule will be effective October 8, 2010.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: August 31, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

■ In consideration of the foregoing, EPA amends part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding paragraph (l)(12) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(l) * * *

(12) Guam Deep Ocean Disposal Site (G–DODS)—Region IX.

(i) *Location:* Center coordinates of the circle-shaped site are: 13°35.500′ North Latitude by 144°28.733′ East Longitude (North American Datum from 1983), with an overall diameter of 3 nautical miles (5.6 kilometers).

(ii) *Size:* 7.1 square nautical miles (24.3 square kilometers) overall site.

(iii) *Depth:* 8,790 feet (2,680 meters).

(iv) *Use Restricted to Disposal of:* Suitable dredged materials.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to a maximum of 1 million cubic yards (764,555 cubic meters) per calendar year of dredged materials that comply with EPA's Ocean Dumping Regulations; disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed at least every 10 years.

* * * * *

[FR Doc. 2010–22324 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No.07–250; FCC 10–145]

Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) adopts final rules governing wireless hearing aid compatibility that are intended to ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling interference or other technical obstacles.

DATES: Effective October 8, 2010, except for the amendments to § 20.19(f) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these amendments. On June 6, 2008 (73 FR 25566, May 7, 2008), the Director of the Federal Register approved the incorporation by reference of a certain publication listed in this final rule.

FOR FURTHER INFORMATION CONTACT: John Borkowski, Wireless Telecommunications Bureau, (202) 418–0626, e-mail *John.Borkowski@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Policy Statement and Second Report and Order in WT Docket No.07–250; FCC 10–145, adopted August 5, 2010, and released on August 5, 2010. This summary should be read with its companion document, the further notice of proposed rulemaking summary published elsewhere in this issue of the **Federal Register**. The full text of the Policy Statement and Second Report and Order is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No.07–250. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Policy Statement and Second Report and Order

I. Introduction

1. In this Policy Statement and Second Report and Order (Second R&O), the Commission affirms that our hearing aid compatibility rules must provide people who use hearing aids and cochlear implants with continuing access to the most advanced and innovative technologies as science and markets develop, while maximizing the

conditions for innovation and investment.

2. The Commission also takes several actions to clarify its rules to keep pace with developments in technology and the market. The Commission clarifies that its hearing aid compatibility rules cover customer equipment that contains a built-in speaker and is designed to be typically held to the ear, adopts a streamlined procedure for amending its rules to incorporate an anticipated revision of the hearing aid compatibility technical standard that will make it generically applicable across frequency bands and interface modes, and extends its disclosure requirements to provide consumers with information about multi-band and multi-mode phones that operate in part over bands or modes for which technical standards have not been established.

3. In order to ensure that people with hearing loss will have access to new and popular models, while continuing to protect the ability of small companies to compete and to foster innovation by new entrants, the Commission modifies the *de minimis* exception in its existing rule so that companies that are not small entities will be required to offer at least one hearing aid-compatible model after a two-year initial period. In recognition of specific challenges that this rule change will impose for handsets operating over the legacy GSM air interface in the 1900 MHz band, the Commission permits companies that will no longer qualify for the *de minimis* exception to meet hearing aid compatibility requirements by installing software that enables customers to reduce the power output by a limited amount for such operations. The Commission also amends its rules requiring manufacturers to deploy hearing aid-compatible handsets so that they apply to handsets sold through all distribution channels, and not only through service providers.

4. The Commission also notes that later this year, the Commission intends to initiate a comprehensive review of the operation of our wireless hearing aid compatibility rules. In that review, the Commission will evaluate the success of our rules in making a broad selection of wireless phones accessible to individuals with hearing loss, and the Commission will consider whether further revisions to those rules are appropriate.

II. Background

5. The Commission is required by law to ensure that persons with hearing loss have access to telephone service. The Hearing Aid Compatibility Act of 1988 required all telephones manufactured or imported for use in the United States to meet established technical standards for hearing aid compatibility, with certain exceptions, among them an exception for telephones used with mobile wireless services. The statute required the Commission to revoke or limit the exemption if it determined that:

- Such revocation or limitation is in the public interest;
- Continuation of the exemption without such revocation or limitation would have an adverse effect on people with hearing loss;
- Compliance with the requirements adopted is technologically feasible for the telephones to which the exemption applies; and
- Compliance with the requirements adopted would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

6. *Current Hearing Aid Compatibility Requirements.* The Commission's requirements apply generally to providers of digital commercial mobile radio services (CMRS) "to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls," as well as to manufacturers of wireless phones used in the delivery of such services. The applicability of the requirements is further limited to those air interfaces and frequency bands (800–950 MHz and 1.6–2.5 GHz) for which technical standards are stated in the most recent revision of the American National Standards Institute (ANSI) standard governing wireless hearing aid compatibility (ANSI C63.19–2007).

7. The Commission's hearing aid compatibility requirements address hearing aids that operate in either of two modes—acoustic coupling or inductive coupling. Hearing aids operating in acoustic coupling mode receive sound through a microphone and then amplify all sounds surrounding the user, including both desired sounds, such as a telephone's audio signal, and unwanted ambient noise. Hearing aids operating in inductive coupling mode turn off the microphone to avoid amplifying unwanted ambient noise, instead using a telecoil to receive only audio signal-based magnetic fields generated by inductive coupling-capable telephones.

8. The rules codify the ANSI C63.19 performance levels as the applicable technical standard for hearing aid compatibility. Beginning January 1, 2010, new applications for certification must use the 2007 version of the ANSI standard, although earlier grants of certification using prior versions of the standard remain valid. The Commission has delegated to the Wireless Telecommunications Bureau (WTB) and Office of Engineering and Technology (OET) authority to adopt by rulemaking future revisions of ANSI C63.19, including extensions of the technical standards to new frequency bands and air interfaces, provided the revisions do not raise major compliance issues.

9. The Commission generally requires each covered manufacturer to offer to service providers, and each service provider to offer to its customers, specific numbers of handset models per air interface in its product line that meet, at a minimum, an M3 rating for reduction of radio frequency (RF) interference between handsets and hearing aids operating in acoustic coupling mode and a T3 rating to enable inductive coupling with hearing aids operating in telecoil mode. These minimum deployment requirements vary depending on the total number of models that the manufacturer or service provider offers over the air interface, and they increase over time from February 15, 2009, to May 15, 2011.

10. The rules also contain a *de minimis* exception to the deployment benchmarks for certain digital wireless handset manufacturers and wireless service providers. Specifically, manufacturers or providers that only offer one or two handset models per air interface are exempt from all hearing aid compatibility requirements, other than the reporting requirements; those that only offer three models are required to offer one that is hearing aid-compatible.

11. In addition, the rules require service providers to make hearing aid-compatible models available for consumer testing in their owned or operated retail stores. The rules also require service providers and manufacturers to disclose in their packaging materials certain information about hearing aid-compatible handsets. Manufacturers and service providers must report annually on efforts toward compliance with the hearing aid compatibility requirements. In addition, manufacturers and service providers that operate publicly accessible Web sites are required to list on their Web sites all hearing aid-compatible models that they offer along with the ratings of those models and an explanation of the ratings.

III. Policy Statement

12. Consistent with Congressional intent to afford equal access to

communications networks to the fullest extent feasible and longstanding Federal Communications Commission precedent, it is the policy of the Commission that our hearing aid compatibility rules provide people who use hearing aids and cochlear implants with continuing access to the most advanced and innovative technologies as science and markets develop. The Commission believes that following three principles will ensure that all Americans, including Americans with hearing loss, will reap the full benefits of new technologies as they are introduced into the marketplace. To maximize the number of accessible products for this population, our policies must adhere to these principles:

- First, given that consideration of accessibility from the outset is more efficient than identifying and applying solutions retroactively, the Commission intends for developers of new technologies to consider and plan for hearing aid compatibility at the earliest stages of the product design process;
- Second, the Commission will continue to account for technological feasibility and marketability as the Commission promulgates rules pertaining to hearing aid compatibility, thereby maximizing conditions for innovation and investment; and
- Third, the Commission will provide industry with the ability to harness innovation to promote inclusion by allowing the necessary flexibility for developing a range of solutions to meet consumers' needs while keeping up with the rapid pace of technological advancement.

IV. Second Report and Order

A. Handsets and Services Covered

1. Handsets Covered by the Rule

13. As an initial matter, the Commission amends our rules to clarify that hearing aid compatibility requirements apply to otherwise covered handsets that contain a built-in speaker and are typically held to the ear. This determination is consistent with the first of the Multi-Band Principles filed on September 11, 2008, by a working group of industry and consumer representatives, which states that those principles apply to "handsets operating in a normal voice mode and typically held to the ear." In the order in which we first adopted wireless hearing aid compatibility rules (*2003 Hearing Aid Compatibility Order),* the Commission stated that devices that do not have any built-in speaker or ear piece would not be required to meet hearing aid compatibility requirements because they were unlikely to cause RF interference to hearing aids and they could not be feasibly equipped with a functioning telecoil. Consistent with that observation, the Commission amends our rules to define a covered "handset" as a device that contains a built-in speaker and is typically held to the ear in any of its ordinary uses. Thus, if a wireless device is not designed to be typically held to the ear in any ordinary use, but only provides voice communication through a speakerphone, headphone or other instrument that carries voice communications from the handset to the ear, or other means that does not involve holding it to the ear, it is not subject to our hearing aid compatibility requirements. The Commission clarifies that in this respect, "typically" encompasses any intended or anticipated ordinary use, and does not mean "usually" or "most often." If a device is configured so as to enable a user to hold it to the ear to receive voice communications in any ordinary anticipated application, it is a "handset" covered by the rule even if the manufacturer or service provider expects that most users will operate it in a speakerphone or other mode.

14. In the *Notice in this proceeding,* the Commission asked "[w]hat constitutes a telephone in the context of devices that more closely resemble mobile computers but have voice communications capabilities" and whether the Commission should broaden or otherwise modify the scope of its hearing aid compatibility rules in order to maintain technology neutrality and ensure the continuing availability of a selection of wireless services and features that is comparable to that available to the general population. Consistent with our general determination, a device that includes both computing and covered voice communication capabilities is subject to hearing aid compatibility requirements so long as it has a built-in speaker and is designed to be typically held to the ear. This scope is necessary to ensure that people with hearing loss will have access to all means of voice communication as devices become increasingly multifunctional and the lines among device categories continue to blur.

2. Application of Technical Standard to New Bands and Air Interfaces

15. *Background.* ANSI Standard C63.19–2007 provides hearing aid compatibility tests for wireless handsets that use voice communications technologies that are in common use in the 800 MHz to 950 MHz and 1600 MHz to 2500 MHz bands. Accordingly, our rules impose hearing aid compatibility requirements only on handsets that provide service over these frequency bands using any air interface for which technical standards exist in the ANSI C63.19 standard. The Commission has delegated to WTB and OET limited authority by rulemaking to adopt new technical standards for additional frequency bands and air interfaces as they are established by the ANSI Accredited Standards Committee C63™ and to approve new hearing aid compatibility standards adopted subsequently to ANSI C63.19–2007.

16. The Multi-Band Principles filed on September 11, 2008, to address the hearing aid compatibility of handsets that operate over multiple frequency bands or voice technology modes, some of which have no established hearing aid compatibility standards. The Multi-Band Principles propose a sequence of events to be followed when a new service is developed over a frequency band or air interface that is not yet subject to a hearing aid compatibility technical standard. Specifically, the Multi-Band Principles propose that a preliminary predictive analysis method should be employed to determine the likelihood of hearing aid compatibility issues for handsets when they operate over new frequency bands or air interfaces. If no issues are identified by this analysis and the handset is otherwise hearing aid-compatible, then the handset would be deemed hearing aid-compatible over all frequencies and bands in which it operates, including new technologies, and no further testing would be required. If a potential hearing aid compatibility issue is identified, then an ANSI-accredited body would devise a hearing aid compatibility standard within a timeframe to be set by the Commission. Beginning 12 months after standards for hearing aid compatibility have been developed and adopted by the Commission, a new handset model that operates in a new frequency band or air interface could not be labeled or counted as hearing aid-compatible if it does not meet the newly adopted hearing aid compatibility standard, although handsets certified prior to that point could continue to be counted as hearing aid-compatible.

17. More recently, ANSI Committee C63 has developed a new draft standard that would revise the current ANSI C63.19–2007 standard. The new draft standard provides for a testing method that could be used for handsets using any air interface and operating over any frequency between 698 MHz and 6 GHz. Under this testing method, a product testing threshold has been established based on certain RF power levels and

modulation characteristics. The new draft standard provides that handsets operating at or below the testing threshold will be exempt from further testing and will be considered to have an M4 rating. Handsets incorporating air interfaces and frequency bands that fail the testing threshold criteria will be required to undergo full testing in accordance with the revised ANSI C63.19 standard. ANSI states that the revised standard has completed an initial round of balloting and round-robin testing, and that it expects final balloting to be completed by the fourth quarter of 2010.

18. *Discussion.* In anticipation that ANSI will adopt the draft standard or something similar, the Commission finds it unnecessary to adopt the full regime set forth in the Multi-Band Principles for handsets operating over air interfaces or frequency bands that lack standards. Rather, the ANSI draft standard enables testing over frequency bands or air interfaces expected to be incorporated in wireless handsets in the near future. Consistent with Sections 20.19(k)(1) and (2) of our rules, the Commission delegates to WTB and OET the authority to adopt a new standard similar to the draft revision by rulemaking, and the Commission directs them to complete such a proceeding promptly following the adoption of such a standard by ANSI. In the event ANSI has not adopted a standard similar to the draft revision by March 31, 2011, the Commission will revisit its decision to withhold action on this portion of the Multi-Band Principles.

19. Under Section 20.19(k)(1), new obligations imposed on manufacturers and service providers as a result of WTB's and OET's adoption of technical standards for additional frequency bands and/or air interfaces shall become effective no less than one year after release of the adopting order for manufacturers and CMRS providers with nationwide footprints (Tier I carriers) and no less than 15 months after release for other service providers. Consistent with this delegation of authority, the Commission expects that rules implementing the ANSI draft standard, if adopted, will apply as follows: No less than 12 months after release of the order adopting the standard, but at a later date if WTB and OET determine that a longer transition period is warranted, the benchmarks then in effect for other air interfaces will apply to manufacturers and Tier I carriers offering handsets using newly covered frequency bands or air interfaces. No less than 15 months after release of the order adopting the standard, but at a later date if WTB and OET determine that a longer transition period is warranted, the same benchmarks will apply to other service providers. These rules will apply to all handsets and services within the scope of the rule unless otherwise specified by the Commission. The authority delegated to WTB and OET does not permit any actions that depart substantially from this regime.

20. While the Commission finds it unnecessary to adopt the Multi-Band Principles in whole, the Commission focuses special attention on Principle 3, which encourages wireless carriers and manufacturers to consider hearing aid compatibility and identify issues early in the design and development of handsets. Early identification of hearing aid compatibility issues enables their resolution earlier and, in many cases, less expensively than when interference is identified in the end stages of handset development. Addressing hearing aid compatibility early on also ensures that handsets that operate over new frequency bands or voice technology modes will be made available to consumers with hearing loss as closely as possible to their availability to the general public.

3. Multi-Band and Multi-Mode Handsets

21. *Background.* Under the Commission's rules, in order to be offered as hearing aid-compatible, a handset must meet hearing aid compatibility standards for every frequency band and air interface that it uses for which standards have been adopted by the Commission. In the *Notice,* the Commission tentatively concluded that, consistent with this principle, multi-band and multi-mode phones should not be counted as compatible in any band or mode if they operate over any air interface or frequency band for which technical standards have not been established. The Commission reasoned that this limitation would conform to consumers' expectation that a phone labeled "hearing aid-compatible" is compatible in all its operations, and also that it would create incentives to develop new compatibility standards more quickly. In the *First Report and Order in February 2008,* the Commission recognized that multi-mode handsets were already on the market that included Wi-Fi capability, and it adopted an interim rule to address their status. Under the interim rule, such handsets may be counted as hearing aid-compatible if they meet hearing aid compatibility standards over all frequency bands and air interfaces for which standards exist, but the manufacturer and service provider must clearly disclose to consumers that the handset has not been rated for hearing aid compatibility with respect to Wi-Fi operation.

22. The Multi-Band Principles propose that operations over frequency bands or air interfaces for which standards do not exist be tested using either the nearest existing approved standard or a preliminary predictive analysis method that the parties would work with ANSI to develop. If the preliminary predictive analysis determines that such operations raise no hearing aid compatibility issues, it would not be necessary to develop a measurement procedure for the operations, and handsets operating over these frequency bands or air interfaces would be considered hearing aid-compatible if they meet hearing aid compatibility standards over all frequency bands and air interfaces for which such standards exist. If hearing aid compatibility issues are identified, then during the period until a measurement procedure is developed and adopted by the Commission, such handsets that otherwise meet hearing aid compatibility standards would be considered hearing aid-compatible, but information that they have not been tested for all operations would have to be conveyed in writing to consumers at the point of sale and through company Web sites. Beginning 12 months after the new standard is adopted by the Commission, a newly produced model could not be counted as hearing aid-compatible for any of its operations unless it meets the hearing aid compatibility standard for the new operation; however, handsets previously counted as hearing aid-compatible could continue to be so counted.

23. *Discussion.* As discussed previously, if the expected draft revision of Standard C63.19 is adopted by ANSI and the Commission, the treatment of multi-band and multi-mode handsets will become moot because there will be no operations without technical standards in the foreseeable future. Nonetheless, the Commission expects it will take a minimum of two years until any such standards have been adopted and compliance becomes mandatory for all services. Meanwhile, handsets that incorporate new frequency bands and air interfaces capable of supporting voice services other than Wi-Fi are already coming on the market. Therefore, for this interim period, the Commission extends to all handsets that incorporate these new frequency bands and air interfaces the same counting and disclosure rules that currently apply to handsets with Wi-Fi. In other words, a handset that meets hearing aid

compatibility requirements over all air interfaces and frequency bands for which technical standards have been established, but that is also capable of supporting voice operations in new frequency bands and air interfaces for which standards do not exist, may be counted as hearing aid-compatible, provided consumers are clearly informed that it has not been tested for the operations for which there are no standards. This is consistent with the proposal in the Multi-Band Principles, which informs consumers that the handset has not been tested and rated in all wireless technologies incorporated in the phone, and that the consumer should thoroughly test all phone features to determine whether the consumer experiences any interfering noise.

24. As recommended in the Multi-Band Principles, the Commission requires that for newly manufactured handsets covered by this rule, the following disclosure language be clearly and effectively conveyed to consumers wherever the hearing aid compatibility rating for the handset is provided, including at the point of sale and on company Web sites: "This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer." The Commission has slightly revised the language proposed in the Multi-Band Principles in recognition that not all handsets are obtained from service providers. The Commission concludes that a uniform text will ensure that consumers are provided with consistent and sufficient information. However, handsets that are already on the market with other disclosure language that complies with our current rule will not be required to replace this with the newly prescribed language.

25. This disclosure rule will apply to all handsets that operate in part over an air interface or frequency band that is not covered by the ANSI C63.19–2007 standard until the date when rules adopting any new standard become effective. The rule will also apply after rules adopting a new standard become effective to the extent that a handset model in fact has not been tested for previously uncovered operations under the new standard. However, a handset that has actually completed testing and been found to meet hearing aid compatibility standards under the new standard should not be described as not tested, but should be labeled with its hearing aid compatibility rating. Consistent with the recommendation in the Multi-Band Principles, a handset model launched earlier than 12 months after publication in the **Federal Register** of rules adopting any new standard could continue to be counted as hearing aid-compatible for operations covered under ANSI C63.19–2007 even if it does not meet the newly adopted standard for all other operations. Rather than describing such handsets as not fully tested, the disclosure should indicate that the phone does not meet hearing aid compatibility standards for some new technologies. WTB and OET shall promulgate rules to implement this modified disclosure requirement in their proceeding to consider adopting any revision of the ANSI standard.

26. Finally, the Commission clarifies that the disclosure requirement includes handsets that are capable of supporting software that can activate additional voice capability. For example, some handsets that transmit and receive data over a Wi-Fi air interface do not contain within them the software to use Wi-Fi for voice communications, but will accommodate commercially available software to enable voice transmissions over Wi-Fi. Other air interfaces such as LTE and WiMAX, while not currently used for voice transmissions, may accommodate software that would enable them to be used for voice communication without any change to the hardware in the underlying handset. Unless they are informed to the contrary, consumers may reasonably expect that handsets which are labeled as hearing aid-compatible will function properly with their hearing aids in all modes of operation for voice communication that can be reasonably anticipated. The Commission therefore finds that this disclosure requirement will afford consumers with hearing loss the opportunity to inquire further about their ability to use the device in all voice modes and make an informed choice about whether the device meets the consumer's needs and expectations.

B. De Minimis Exception

27. *Background.* Section 20.19 of the Commission's rules provides a *de minimis* exception to hearing aid compatibility obligations for those manufacturers and mobile service providers that only offer a small number of handset models. Specifically, Section 20.19(e)(1) provides that manufacturers and mobile service providers offering two handset models or fewer in the United States over an air interface are exempt from the requirements of Section 20.19, other than the reporting requirement. Section 20.19(e)(2) provides that manufacturers or mobile service providers that offer three handset models over an air interface must offer at least one compliant model.

28. *Discussion.* In order to ensure that consumers who use hearing aids have access to a variety of phones, while preserving competitive opportunities for small companies as well as opportunities for innovation and investment, the Commission modifies the *de minimis* rule as applied to companies that are not small entities. Specifically, the Commission decides that beginning two years after it offers its first handset model over an air interface, a manufacturer or service provider that is not a small entity, as defined herein, must offer at least one model that is rated M3 or higher and at least one model that is rated T3 or higher if it offers one, two or three total handset models. In order to maintain parity and to allow entities that have been relying on the *de minimis* rule a reasonable period for transition, this obligation will become effective for manufacturers and service providers that offer one or two handset models over an air interface two years after the latest of the following: The date the manufacturer or service provider began offering handsets over the air interface, the date this Order is published in the **Federal Register,** the date a hearing aid compatibility technical standard is adopted for the relevant operation, or the date a previously small entity no longer meets our small entity definition. In addition, the Commission permits manufacturers and service providers that would have come under the amended *de minimis* rule but for their size to satisfy hearing aid compatibility deployment requirements for the legacy GSM air interface by relying on a handset that allows consumers to reduce the maximum power output only for operations over the GSM air interface in the 1900 MHz band by no more than 2.5 decibels (dB) in order to meet the RF interference standard.

29. In conjunction with these modifications to the *de minimis* rule, the Commission also revises our "refresh" rule to clarify its application to manufacturers that will be newly subject to hearing aid compatibility requirements. The refresh rule states

that if a manufacturer offers any new models for a particular air interface, it must offer in each calendar year a number of new models rated M3 or higher that is equal to at least half of its total required number of models rated M3 or higher, except that a manufacturer that offers three models over an air interface must offer at least one new model rated M3 or higher every other calendar year. Consistent with the purposes of this rule, the Commission now requires manufacturers that are not small entities that offer two models over an air interface, after the first two years, to introduce at least one new model rated M3 or higher every other year.

30. *Retention of de minimis rule for small entities.* The *de minimis* rule serves two purposes. One purpose is to ensure that small manufacturers and service providers have an opportunity to compete in the market. When the Commission first adopted the *de minimis* exception in 2003, it stressed the disproportionate impact that hearing aid compatibility requirements could have on small manufacturers or those that sell only a small number of digital wireless handset models in the United States, as well as on service providers that offer only a small number of digital wireless handset models. In order to further this procompetitive interest, the Commission retains the *de minimis* exception in full for small entities. The Commission concludes that the benefits to competition outweigh any consumer harm from not requiring these small entities to offer hearing aid-compatible telephones.

31. For purposes of this rule, the Commission defines "small entity" by adopting size standards consistent with those of the Small Business Administration (SBA). The relevant SBA categories are: (1) Wireless communications service providers (except satellite), and (2) radio and television broadcasting and wireless communications equipment manufacturing. A wireless communications service provider is small if it is independently owned and operated, is not dominant in its field of operation, and has 1,500 or fewer employees. Independently owned and operated, non-dominant firms in the category of radio and television broadcasting and wireless communications equipment manufacturers are considered small if they have 750 or fewer employees. Accordingly, the Commission will use 1,500 or fewer employees for wireless communications service providers and 750 or fewer employees for wireless communications equipment manufacturers as the size standards for applying the *de minimis* rule.

32. *Limitation of the de minimis rule for companies that are not small entities.* In addition to preserving competitive opportunities for small entities, the *de minimis* rule also helps ensure that new entrants to the market have the opportunity to innovate. In the *First Report and Order,* the Commission expressed its concern that the *de minimis* rule "not be limited in a manner that would compromise its effectiveness in promoting innovation and competition." Several commenters contend that the *de minimis* rule allows new entrants to the handset manufacturing marketplace to develop innovative handsets and expeditiously bring them to market.

33. The Commission recognizes that new entrants may bring innovations to the wireless handset market, and that they may be discouraged from doing so if their first products are required to meet specific technical mandates. Thus, the Commission continues to apply the existing *de minimis* rule during the first two years that a manufacturer or service provider of any size is offering handsets, and during the first two years that an established entity is offering handsets over a particular air interface. The Commission is not persuaded, however, that the interest in innovation requires preserving the *de minimis* exception for large entities indefinitely. Once an entity with substantial resources is established as a manufacturer or service provider, it should be able to offer some handsets that meet the needs of consumers with hearing aids at the same time as it is innovating and investing.

34. The Commission notes that while several commenters argue that the *de minimis* rule is necessary to allow new entrants to innovate, they generally do not specifically argue that this requires the exception to be maintained indefinitely. To the contrary, they contend that manufacturers will typically expand their product offerings and meet hearing aid compatibility requirements after an initial period. Indeed, some parties have recently proposed a limitation of the *de minimis* exception to two years as a possible alternative to the current rule. The Commission notes that Apple, Inc. (Apple) has used the *de minimis* rule over the past three years to continue offering its iPhone without full hearing aid compatibility. However, Apple's stated need for the *de minimis* exception is due to technical circumstances surrounding GSM operation over the 1900 MHz band by products with thin form configurations, which the Commission addresses below. To the extent other unique circumstances may arise in the future, the Commission finds they would be better addressed through case-by-case consideration, rather than by retaining an overly broad *de minimis* rule that potentially denies access to handsets by people with hearing loss.

35. The Commission is not persuaded by arguments that market forces render modification of the *de minimis* rule unnecessary. Several commenters argue that after a period of time, manufacturers will naturally expand their product offerings and thereby become subject to hearing aid compatibility requirements. While such an expansion of portfolios occurs in many instances, it has not occurred, for example, with Apple. Other commenters argue that in light of the large number of hearing aid-compatible handsets that are currently on the market, it is unnecessary to apply hearing aid compatibility requirements to large entities with limited product lines. This argument overlooks that each company that offers a hearing aid-compatible handset adds to the diversity of choices on the market, and therefore there is a public interest benefit to defining the exception no more broadly than necessary to promote competition and innovation.

36. *The two-year entry period.* In order to preserve the opportunity for new entrants to develop innovative products and services, the *de minimis* rule will continue to be available during the first two years that a manufacturer or service provider is in the relevant business. Similarly, a manufacturer or service provider of any size may continue to use the *de minimis* rule during the first two years that it offers handsets that operate over a particular air interface. The Commission finds that, in light of typical industry product cycles, two years is an appropriate period for a company that is not a small entity to introduce a hearing aid-compatible handset. For example, Apple introduced its third iPhone model within approximately two years after bringing the original iPhone to market. While the interest in innovation counsels in favor of permitting any company to introduce its first handset model over an air interface without meeting hearing aid compatibility standards, the public interest requires that a sizable company, once it is on its second or third generation of handsets, place a high enough priority on hearing aid compatibility to meet these standards for at least one model.

37. The Commission also allows a similar two-year transition period in other circumstances where an entity

that offers one or two handsets over an air interface becomes newly required to offer hearing aid-compatible handsets. The Commission recognizes that companies, and particularly manufacturers, that until now have not been required to offer hearing aid-compatible handsets will need a transition period to begin doing so. Accordingly, the new requirements will not become applicable to entities that are currently in the relevant business until two years after this Order is published in the **Federal Register**. Similarly, the Commission provides a two-year transition when a previously small business first exceeds the small business size standard. In addition, when hearing aid compatibility standards are newly adopted for an air interface or frequency band, manufacturers and service providers that offer one or two handset models over that air interface or frequency band will not be required to offer a hearing aid-compatible model until two years after rules adopting the technical standard are published in the **Federal Register**. While the Commission recognizes that manufacturers are typically aware of proposed standards well before they are adopted, the Commission is persuaded that businesses with small product lines, because they have less flexibility to work with multiple form factors and other design features, may need more time to introduce hearing aid-compatible products under these circumstances than the minimum of one year afforded to other manufacturers and service providers. The two-year transition period places companies in all of these circumstances on an equal footing with companies that are newly entering the market.

38. *GSM in the 1900 MHz band.* In recognition of the special technical challenges of meeting hearing aid compatibility standards for handsets with certain desirable form factors operating over the legacy 2G GSM air interface in the 1900 MHz band, the Commission permits companies that would come under the amended *de minimis* rule but for their size to satisfy the hearing aid-compatible handset deployment requirement for GSM using a handset that allows the customer to reduce the maximum output power for GSM operations in the 1900 MHz band by up to 2.5 dB in order to meet the RF interference standard.

39. The Commission finds that a special allowance to meet hearing aid compatibility standards for handsets operating over the 2G GSM network at 1900 MHz, in the narrow context of companies that but for their size would be eligible for the amended *de minimis* exception, is in the public interest. Achieving hearing aid compatibility for GSM handsets in the 1900 MHz band implicates special technological challenges. The Commission has noted that "technological issues make it difficult to produce a wide variety of [GSM] handsets that both meet the M3 standard for reduced RF interference for acoustic coupling and include certain popular features." For example, based on the hearing aid compatibility status reports filed by handset manufacturers in July 2010 for the reporting period from July 1, 2009, to June 30, 2010, 121 out of 122 handsets operating over the CDMA air interface, or 99%, were rated M3 or better, whereas only 82 of 153 GSM handsets, or 54%, were rated M3 or better. Certain technological choices in handset form and function, such as thin form factors and touch screens, increase the difficulty of meeting the ANSI standard for these handsets while bringing unique benefits to consumers. If the Commission were to apply hearing aid compatibility technical standards strictly to manufacturers that narrowly specialize in phones with these features, the Commission is concerned that such handsets might become unavailable to consumers with and without hearing loss alike. Alternatively, such manufacturers may choose to produce additional models with no unique features that are not demanded by the market simply to meet the new benchmarks that will apply to them two years following the release of this Order. A targeted approach that allows some flexibility in the hearing aid compatibility technical standards, to accommodate this narrow situation, will avoid these consequences and better promote access for people with hearing loss.

40. The Commission further finds that allowing hearing aid-compatible phones to incorporate a limited user-controlled power reduction option under such circumstance is an appropriate means to address these concerns. A 2.5 dB reduction in power will have limited impact on the ability of people with hearing loss to use the affected phones. For one thing, any impact would be limited to those times when a handset is operating on GSM and at 1900 MHz. Furthermore, the diminution in power that occurs from a 2.5 dB loss should generally have an effect only when a handset is operated near the edge of reliable service coverage. Handsets usually operate at no more power than needed in order to prolong the battery charge and minimize potential interference, and they typically transmit at full power only to overcome signal fading in areas where there are obstructions or a large distance between the handset and the nearest base station. In addition, the modified rule applies only to 2G GSM technology, which is being phased out in favor of 3G alternatives. Also, as described by ANSI ASC C63™, the new version of the ANSI C63.19 standard that is currently under consideration, because it will measure RF interference potential directly and eliminate the need for certain conservative assumptions, will make it approximately 2.2 dB easier for a GSM phone to achieve an M3 rating. The Commission expects that if the new standard is adopted, manufacturers will find it in their interest to abandon the power reduction if possible, or diminish it to the extent they can, in order to make their phones most attractive to people with hearing loss.

41. The Commission recognizes, as certain parties have argued, that the Commission has previously disfavored reduction in output power as a means of meeting hearing aid compatibility requirements. Consistent with these prior holdings, the Commission affirms that the requirement to test for hearing aid compatibility at full power generally serves the important goal of ensuring that people with hearing loss have equal access to all of the service quality and performance that a given wireless phone provides. The Commission finds, however, in this narrow context, that the interest in fully equal access is outweighed by the importance of preserving the availability of a small category of phones that have desirable and beneficial features, and that will be made substantially accessible to people with hearing loss, from companies that specialize in producing only such phones. In the Further Notice of Proposed Rulemaking, issued together with this Second Report and Order, the Commission requests comment on whether to extend this exception to the full power testing requirement beyond companies that offer only one or two handset models. In addition, as proposed by HLAA, the Commission will monitor the impact of this rule and revisit the need for it in the future. In particular, in the event a new ANSI technical standard is adopted, the Commission will initiate a review of this rule shortly thereafter.

42. Accordingly, subject to the conditions set forth below, the Commission amends its rules so that a company offering one or two handset models over the GSM air interface that would have been eligible for the amended *de minimis* exception rule but for its size may satisfy its obligation to

offer one hearing aid-compatible handset over the GSM air interface through a handset that lets the consumer reduce maximum transmit power for GSM operations in the 1900 MHz band by up to 2.5 decibels and that then meets the ANSI criteria for an M3 rating after such power reduction. The power reduction must affect only 2G GSM operations in the 1900 MHz band, and the phone's default setting must be for full power operation. Once a handset meeting these criteria has been introduced in order to satisfy this hearing aid compatibility deployment requirement, the manufacturer or service provider may continue to count it as a hearing aid-compatible handset even if it increases its number of handset models operating over the GSM air interface beyond two.

43. The Commission does find that two conditions on this rule are necessary in the public interest. First, through software or other programming, the Commission requires these handsets to operate at full transmit power when calling 911 on GSM at 1900 MHz. Although some parties have argued that powering the phone back up in this circumstance would raise consumer awareness and education issues, the Commission finds that the public interest is better served by maximizing the coverage for a 911 call even if some interference is experienced by consumers who use hearing aids. In addition, the Commission requires that consumers be adequately informed of the need to select the power reduction option to achieve hearing aid compatibility and of the consequences of doing so. Specifically, wherever a manufacturer or service provider provides the hearing aid compatibility rating for such a handset, it shall indicate that user activation of a special mode is necessary to meet the hearing aid compatibility standard. In addition, the handset manual or a product insert must explain how to activate the special mode and that doing so may result in a diminution of coverage.

44. *Other circumstances.* In recent filings, Research in Motion Limited (RIM) has urged the Commission to retain a *de minimis* rule that would apply in situations where handsets are being phased out of production or retail sales portfolios. RIM states that "if a manufacturer or service provider is phasing out a particular air interface but still offers two or three handsets for a particular air interface, absent the current *de minimis* exception or a similar provision it would be compelled (regardless of carrier or consumer demand) to either discontinue all of the models concurrently with the HAC model, or maintain the HAC model solely for the purposes of enabling it to continue offering the non-HAC model(s)." RIM suggests a possible rule under which if a manufacturer or service provider offers four or more handsets over an air interface during a given calendar year, in the next calendar year offers three or fewer handsets, and in subsequent calendar years offers one or two of those remaining handsets, it would not need to offer any hearing aid-compatible handsets beginning in the third year.

45. The Commission declines to take action on RIM's proposal in the absence of a developed record or concrete evidence of a problem that needs to be addressed. While the scenario that RIM poses is plausible on its face, it provides no example of any instance where a manufacturer or service provider has actually used or will use the *de minimis* rule to manage its phasing out of a portfolio in which it previously offered hearing aid-compatible handsets. In the event a situation arises where retaining a hearing aid-compatible offering over an air interface that is being discontinued would cause hardship to a manufacturer or service provider, and discontinuing the handset would not unduly disadvantage people with hearing loss, the Commission would entertain a request for waiver.

46. *Review of the de minimis rule.* Hearing Loss Association of America (HLAA) proposes that whatever actions the Commission takes, it should revisit any changes to the *de minimis* rule in a timely manner to see what impact they have in the real world. While the Commission believes the actions it takes today will best balance the interests of industry and consumers, it recognizes that these rules are complex and their consequences over time cannot be predicted with certainty. The Commission therefore will undertake a comprehensive review of the *de minimis* rule no later than 2015.

C. New Distribution Channels

47. *Background.* Under current rules, manufacturers are required to produce a certain number or percentage of handset models that meet the Commission's hearing aid compatibility standards. These hearing aid compatibility deployment benchmarks for manufacturers, however, are codified in terms of the handsets that they offer to service providers. Thus, the rules apply only to handsets that manufacturers offer to service providers and that service providers then offer to consumers. If handsets are not offered to service providers, then the benchmarks in Section 20.19 do not apply.

48. *Discussion.* Based on the record in this proceeding, the Commission updates our rules and amend Section 20.19(c) and (d) to apply the deployment benchmarks to all handsets that a wireless handset manufacturer produces for distribution in the United States that are within the scope of Section 20.19(a) of the rule. This rule change will address new handset manufacturer distribution models in existing networks and ensure that wireless handsets will be covered by our hearing aid compatibility obligations regardless of distribution and sales channels.

49. The Commission finds this rule change will serve the public interest as a better and more proactive approach to ensure the availability of hearing aid-compatible handsets in the developing handset marketplace. Whatever may have been the case in 2007, it is not now premature to apply hearing aid compatibility requirements to all distribution channels. To the contrary, a variety of phones is readily available to consumers through outlets ranging from online retailers to convenience stores to electronics specialty outlets, as well as directly from manufacturers. Indeed, Google recently experimented with selling its Nexus One handset only directly to consumers. While the Commission cannot predict how the market will develop, extending the scope of the manufacturer requirement to all handsets will ensure that wireless handsets are available to people with hearing loss regardless of distribution and sales channels. Moreover, no commenter has identified, and the Commission cannot conceive, any reason why meeting deployment benchmarks for hearing aid-compatible handsets might be more difficult or burdensome as a result of the method of distribution.

50. The Commission recognizes that manufacturers may need time to meet the requirements of the changed rule. For example, a manufacturer that does not produce any handsets for sale through service providers is not currently required to offer any hearing aid-compatible handsets, and therefore may need to make technological adjustments to meet these requirements. Therefore, the Commission concludes that manufacturers will have until 12 months from publication of the rule in the **Federal Register** to come into compliance with this new provision. This is the same as the minimum compliance period that our rules currently provide when the Commission adopts hearing aid compatibility standards for a new frequency band or air interface.

51. The Commission clarifies that handsets covered by this rule include handsets that manufacturers sell to businesses for distribution to their employees. For example, a business may distribute handsets to its employees that are intended primarily for internal communications or for data tracking, but that also incorporate external voice communications capability within the scope of Section 20.19(a). If the handset incorporates a built-in speaker and is typically held to the ear, then the manufacturer must count that handset in determining whether it meets the benchmarks for deploying hearing aid-compatible handsets.

52. Finally, the Commission clarifies that the manufacturer of a phone is the party that produces it. The Commission expects to consider this issue further in the 2010 review.

D. Volume Controls

53. *Background.* In the *Notice,* the Commission urged all interested parties to specifically look into adding volume controls to wireless handsets. The Commission noted earlier statements by some in the deaf and hard of hearing community that one of hearing aid users' most important concerns regarding wireless devices is the lack of adequate volume control on handsets. The *Notice* sought comment on whether any volume control requirements should be incorporated into our rules, and if so what they should be.

54. *Discussion.* As several commenters have noted, the Alliance for Telecommunications Industry Solutions (ATIS) Incubator Solutions Program #4—Hearing Aid Compatibility (AISP.4–HAC) has formed a working group, denominated WG–11, to investigate the interaction of wireless handsets and digital hearing aids. The findings of this investigation, including recommendations for achieving adequate listening levels for consumers who wear hearing aids while using wireless phones, will be shared with the Commission upon the completion of this group's efforts. As the Commission is awaiting input from the AISP.4–HAC working group, the Commission is taking no action in this Second Report and Order. The Commission will further consider this issue as part of the 2010 review.

E. Display Screens

55. *Background.* The *Notice* noted that the Technology Access Program of Gallaudet University had pointed out that the display screens on smart phones emit electromagnetic energy that may interfere with the operation of hearing aids. It therefore invited comment on this issue, including whether any measures are appropriate to promote the deployment of phones that enable users to turn off their screens.

56. *Discussion.* The Commission finds that the existing record does not establish a need for Commission action at this time. The Commission will seek further comment on this issue in the 2010 review.

V. Procedural Matters

A. Final Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules considered in the *Notice* in WT Docket No. 07–250.[2] The Commission sought written public comment on the *Notice* in this docket, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Proposed Rules

58. In the Second Report and Order, the Commission makes several changes to its existing hearing aid compatibility requirements so that they will continue effectively to ensure in an evolving marketplace of new technologies and services that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling interference or other technical obstacles. First, the Commission provides that multi-band and multi-mode handsets that meet hearing aid compatibility requirements over all air interfaces and frequency bands for which technical standards have been established, but that also accommodate voice operations for which standards do not exist, may be counted as hearing aid-compatible, provided consumers are informed that they have been tested for the operations for which there are not standards. This rule change extends to all such handsets the same regulatory regime that currently applies to handsets that incorporate Wi-Fi capability, and it ensures that consumers will have the information they need to best evaluate how a handset will operate with their hearing aids. In order to further ensure that consumers are provided with consistent and sufficient information, the Commission also prescribes specific language to be used in the disclosure.

59. Second, the Commission refines the *de minimis* exception in its existing rule so that companies that are not small entities will be required to offer at least one hearing aid-compatible model after a two-year initial period. Manufacturers subject to this rule will also be required to offer at least one new model that is hearing aid-compatible for acoustic coupling every other calendar year. The Commission thereby helps ensure that people with hearing loss will have access to new and popular models, while continuing to protect the ability of small companies to compete and to foster innovation by new entrants. Further, in recognition of specific challenges that this rule change will impose for handsets operating over the legacy GSM air interface in the 1900 MHz band, the Commission permits companies that will no longer qualify for the *de minimis* exception under this rule change to meet hearing aid compatibility requirements by installing software that enables customers to reduce the power output by a limited amount for such operations.

60. Third, the Commission extends the hearing aid-compatible handset deployment requirements applicable to manufacturers to include handsets distributed by the manufacturer through channels other than service providers. This action ensures that consumers will continue to experience the benefits of hearing aid compatibility as innovative business plans give rise to a diversity of distribution channels.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

61. No comments specifically addressed the IRFA. Nonetheless, small entity issues raised in comments are addressed in this FRFA in Sections D and E.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

62. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07–250, Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01–309, Petition of American National Standards Institute Accredited Standards Committee C63 (EMC) ANSI ASC C63®, *Notice of Proposed Rulemaking,* 22 FCC Rcd 19760 (2007) (*Notice*).

proposed rules, if adopted.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[6]

63. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[7]

64. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)."[8] Under that SBA category, a business is small if it has 1,500 or fewer employees.[9] The census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)". However, since currently available data was gathered when "Cellular and Other Wireless Telecommunications" was the relevant category, earlier Census Bureau data collected under the category of "Cellular and Other Wireless Telecommunications" will be used here. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[10] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[11] Thus, under this category and size standard, the majority of firms can be considered small.

65. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[12] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[13] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[14] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[15] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[16]

66. On January 26, 2001, the Commission completed the auction of 422 C and F Block PCS licenses in Auction 35.[17] Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[18] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[19] Of the 14 winning bidders, six were designated entities.[20] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F Block licenses in Auction 78.[21]

67. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[22] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[23] The SBA has approved these small business size standards for the 900 MHz Service.[24] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR

[3] 5 U.S.C. 604(a)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[6] 15 U.S.C. 632.

[7] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs* (last visited Jan. 2009).

[8] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517210.

[9] *Id.*

[10] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

[11] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1,000 employees or more."

[12] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order,* 11 FCC Rcd 7824, 7850–7852 paras. 57–60 (1996); *see also* 47 CFR 24.720(b).

[13] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order,* 11 FCC Rcd 7824, 7852 para. 60.

[14] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated December 2, 1998.

[15] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[16] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *public notice,* 14 FCC Rcd 6688 (WTB 1999).

[17] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *public notice,* 16 FCC Rcd 2339 (2001).

[18] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice,* 20 FCC Rcd 3703 (2005).

[19] *See* "Auction of Broadband PCS Spectrum License Closes; Winning Bidders Announced for Auction No. 71," *public notice,* 22 FCC Rcd 9247 (2007).

[20] *Id.*

[21] *See* Auction of AWS–1 and Broadband PCS Licenses Rescheduled For August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *public notice,* 23 FCC Rcd 7496 (2008) (*AWS–1 and Broadband PCS Procedures Public Notice*).

[22] 47 CFR 90.814(b)(1).

[23] *Id.*

[24] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated August 10, 1999.

band.[25] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 licenses. One bidder claiming small business status won five licenses.[26]

68. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

69. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR services pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

70. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[27] This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had a combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[28] Four winning bidders that identified themselves as very small businesses won 17 licenses.[29] Three of the winning bidders that identified themselves as small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

71. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[30] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[31] In the present context, the Commission will use the SBA small business size standard applicable to Wireless Telecommunication Carriers (except satellite), *i.e.,* an entity employing no more than 1,500 persons.[32] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

72. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million or less for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million or less for each of the three preceding years.[33] The SBA has approved these definitions.[34] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

73. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of States bordering the Gulf of Mexico.[35] There is presently one licensee in this service. The Commission does not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[36] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[37]

74. *Broadband Radio Service and Educational Broadband Service.* The Broadband Radio Service ("BRS"), formerly known as the Multipoint Distribution Service ("MDS"),[38] and the Educational Broadband Service ("EBS"), formerly known as the Instructional Television Fixed Service ("ITFS"),[39] use 2 GHz band frequencies to transmit video programming and provide broadband services to residential

[25] *See* "Correction to public notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[26] *See* "Multi-Radio Service Auction Closes," *public notice,* 17 FCC Rcd 1446 (WTB 2002).

[27] *See* AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[28] *Id.* at 7521–22.

[29] *See* "Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *public notice,* 23 FCC Rcd 12749 (2008).

[30] The service is defined in Section 22.99 of the Commission's rules, 47 CFR 22.99.

[31] BETRS is defined in Sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[32] 13 CFR 121.201, NAICS code 517210.

[33] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order,* 12 FCC Rcd 10785, 10879 para. 194 (1997).

[34] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated December 2, 1998.

[35] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[36] 13 CFR 121.201, NAICS code 517210.

[37] *Id.*

[38] *See* 47 CFR part 21, subpart K; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Part 1 of the Commission's Rules—Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004).

[39] *See* 47 CFR Part 74, subpart I; *MDS/ITFS Order,* 19 FCC Rcd 14165 (2004).

subscribers.[40] These services, collectively referred to as "wireless cable," were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.[41] The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. The SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS and ITFS.[42] Note that the census category of "Cable and Other Program Distribution" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers" (except satellite). This category provides that a small business is a wireless company employing no more than 1,500 persons.[43] However, since currently available data was gathered when "Cable and Other Program Distribution" was the relevant category, earlier Census Bureau data collected under the category of "Cable and Other Program Distribution" will be used here. Other standards also apply, as described.

75. The Commission has defined small MDS (now BRS) entities in the context of Commission license auctions. In the 1996 MDS auction,[44] the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[45] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[46] In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are hundreds of MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction and that fall under the former SBA small business size standard for Cable and Other Program Distribution.[47] Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 of these small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

76. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).[48] The Commission estimates that there are currently 2,452 EBS licenses, held by 1,524 EBS licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,424 EBS licensees are small entities.

77. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands.[49] Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a "small business," and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a "very small business." [50] SBA has approved these small business size standards for the aforementioned bands.[51] Correspondingly, the Commission adopted a bidding credit of 15 percent for "small businesses" and a bidding credit of 25 percent for "very small businesses." [52] This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission's rules.[53] The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services.[54] The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities.[55] The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of

[40] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report,* 20 FCC Rcd 2507, 2565 para. 131 (2006).

[41] *Id.*

[42] 13 CFR 121.201, NAICS code 515210.

[43] 13 CFR 121.201, NAICS code 517210.

[44] MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

[45] 47 CFR 21.961(b)(1).

[46] *See* Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Docket No. 94–131, *Report and Order,* 10 FCC Rcd 9589 (1995).

[47] Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "Cable and Other Program Distribution" (annual receipts of $13.5 million or less). *See* 13 CFR 121.201, NAICS code 515210.

[48] In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). The Commission does not collect annual revenue data on EBS licensees.

[49] *See* Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002) (*Government Transfer Bands Service Rules Report and Order*).

[50] *See* Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, WT Docket No. 02–8, *Notice of Proposed Rulemaking,* 17 FCC Rcd 2500, 2550–51 paras. 144–146 (2002). To be consistent with the size standard of "very small business" proposed for the 1427–1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding $3 million, the *Service Rules Notice* proposed to use the terms "entrepreneur" and "small business" to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively. Because the Commission is not adopting small business size standards for the 1427–1432 MHz band, it instead uses the terms "small business" and "very small business" to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively.

[51] *See* Letter from Hector V. Barreto, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Jan. 18, 2002.

[52] Such bidding credits are codified for the unpaired 1390–1392 MHz, paired 1392–1395 MHz, and the paired 1432–1435 MHz bands in 47 CFR 27.807. Such bidding credits are codified for the unpaired 1670–1675 MHz band in 47 CFR 27.906.

[53] In the *Part 1 Third Report and Order,* the Commission adopted a standard schedule of bidding credits, the levels of which were developed based on its auction experience. *Part 1 Third Report and Order,* 13 FCC Rcd at 403–04 para. 47; *see also* 47 CFR 1.2110(f)(2).

[54] *See Service Rules Notice,* 17 FCC Rcd at 2550–51 para. 145.

[55] *See, e.g.,* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, WT Docket No. 96–18, PR Docket No. 93–253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order,* 14 FCC Rcd 10030, 10091 para. 112 (1999).

applicants.[56] An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

78. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees. [57] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

79. The Commission adopts several reporting, recordkeeping, and other compliance requirements which could affect small entities. First, as an interim measure, the Commission extends to all handsets that incorporate new frequency bands and air interfaces usable for voice services other than Wi-Fi the same counting and disclosure rules that currently apply to handsets with Wi-Fi. In other words, a handset that meets hearing aid compatibility requirements over all air interfaces and frequency bands for which technical standards have been established, but that also accommodates voice operations for which standards do not exist, may be counted as hearing aid-compatible provided consumers are clearly informed that it has not been tested for the operations for which there are not standards.

80. The Commission further requires that for newly manufactured handsets covered by this rule, the following disclosure language be used: "This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or phone retailer about its return and exchange policies. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer." The Commission concludes that a uniform text will ensure that consumers are provided with consistent and sufficient information. However, handsets that are already on the market with other disclosure language that complies with the current rule will not be required to replace this with the newly prescribed language. This disclosure rule will apply to all handsets that operate in part over an air interface or frequency band that is not covered by the current hearing aid compatibility technical standard until the date that rules adopting any new standard become effective.

81. In order to ensure that consumers who use hearing aids and cochlear implants have access to a variety of phones, while preserving competitive opportunities for small companies as well as opportunities for innovation and investment, the Commission modifies the *de minimis* rule as applied to companies that are not small entities. Specifically, the Commission decides that beginning two years after it offers its first handset model over an air interface, a manufacturer or service provider that is not a small entity must offer at least one model that is rated M3 or higher and at least one model that is rated T3 or higher if it offers between one and three total handset models. Consistent with the SBA size standards, a "small entity" is defined as a service provider that, together with its parent, subsidiary, or affiliate companies under common ownership or control, has 1500 or fewer employees or a manufacturer that, together with its parent, subsidiary, or affiliate companies under common ownership or control, has 750 or fewer employees. In order to maintain parity and to allow entities that have been relying on the *de minimis* rule a reasonable period for transition, this obligation will become effective for manufacturers and service providers that offer one or two handset models over an air interface two years after the latest of the following: The date the manufacturer or service provider began offering handsets over the air interface, the date the amended rule is published in the **Federal Register,** the date a hearing aid compatibility technical standard is adopted for the relevant operation, or the date a previously small entity no longer meets our small entity definition. The Commission also revises the "refresh" rule to require manufacturers that are not small entities that offer two models over an air interface, after the first two years, to introduce at least one new model rated M3 or higher every other year.

82. In recognition of the special technical challenges of meeting hearing aid compatibility technical standards for handsets with certain desirable form factors operating over the legacy 2G GSM air interface in the 1900 MHz band, the Commission permits companies that would come under the amended *de minimis* rule but for their size to satisfy the hearing aid-compatible handset deployment requirement for GSM using a handset that allows the customer to reduce the maximum output power for GSM operations in the 1900 MHz band by up to 2.5 decibels, except for emergency calls to 911, in order to meet the standard for radio frequency interference reduction. Wherever a manufacturer or service provider provides the hearing aid compatibility rating for such a handset, it shall indicate that user activation of a special mode is necessary to meet the hearing aid compatibility standard. In addition, the handset manual or product insert must explain how to activate the special mode and that doing so may result in a diminution of coverage. These actions are taken to ensure that consumers who use hearing aids and cochlear implants have access to a variety of phones and are adequately informed about the functionality and the limitations of the handsets, while preserving competitive opportunities for small companies as well as opportunities for innovation and investment.

83. Currently, wireless handsets are increasingly distributed through channels other than service providers. The Commission therefore amends

[56] 47 U.S.C. 309(j)(3)(B), (4)(C)–(D). The Commission will also not adopt special preferences for entities owned by minorities or women, and rural telephone companies. The Commission did not receive any comments on this issue, and it does not have an adequate record to support such special provisions under the current standards of judicial review. *See Adarand Constructors* v. *Peña,* 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for government mandated race-conscious measures); *United States* v. *Virginia,* 518 U.S. 515 (1996) (applying an intermediate standard of review to a State program based on gender classification).

[57] 13 CFR 121.201, NAICS code 334220.

Section 20.19(c) and (d) to apply the hearing aid-compatible handset deployment benchmarks to all handsets that a wireless handset manufacturer produces for distribution in the United States that are within the scope of Section 20.19(a) of the rule. Manufacturers will have until 12 months from publication of the rule in the **Federal Register** to come into compliance with it. The Commission clarifies that handsets covered by this rule include handsets that manufacturers sell to businesses for distribution to their employees. This rule change will address new handset manufacturer distribution models in existing networks and ensure that wireless handsets will be covered by the Commission's hearing aid compatibility obligations regardless of distribution and sales channels. The Commission finds that this rule change will serve the public interest as a better and more proactive approach to ensure the availability of hearing aid-compatible handsets in the developing handset marketplace.

5. Steps Proposed To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

84. The RFA requires an agency to describe in the IRFA any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[58] The Commission considered these alternatives with respect to all of the requirements that it is imposing on small entities in the Second Report and Order, and this FRFA incorporates by reference all discussion in the Second Report and Order that considers the impact on small entities of the rules adopted by the Commission. In addition, the Commission's consideration of those issues as to which the impact on small entities was specifically discussed in the record is summarized below:

85. Until such time as any revision of the hearing aid compatibility technical standard may be adopted by the Commission, the Commission extends to all handsets that incorporate frequency bands and air interfaces other than Wi-Fi usable for voice services for which no hearing aid compatibility standards exist the same counting and disclosure rules that currently apply to handsets with Wi-Fi capability. The disclosure requirement is necessary in order to count these handsets as hearing aid-compatible without misleading consumers, and therefore no exception is appropriate for small entities. The Commission further prescribes uniform disclosure language to ensure that consumers are provided with consistent and sufficient information. This uniform language will also streamline and simplify the disclosure process, thereby easing the burden on regulated entities. However, handsets that are already on the market bearing another label that complies with the current rule will not be required to replace this label with the newly prescribed language. This transitional exception will ease the regulatory burden on small service providers that may have a slower turnover of their inventory.

86. The Commission modifies the *de minimis* rule as applied to companies that are not small entities. Specifically, the Commission decides that beginning two years after it offers its first handset model over an air interface, a manufacturer or service provider that is not a small entity, as defined herein, must offer at least one model that is rated M3 or higher and at least one model that is rated T3 or higher if it offers between one and three total handset models. The Commission also revises the "refresh" rule to require manufacturers that are not small entities that offer two models over an air interface, after the first two years, to introduce at least one new model rated M3 or higher every other year. Consistent with the SBA size standards, a "small entity" is defined as a service provider that, together with its parent, subsidiary, or affiliate companies under common ownership or control, has 1500 or fewer employees or a manufacturer that, together with its parent, subsidiary, or affiliate companies under common ownership or control, has 750 or fewer employees. In order to minimize the economic impact on small manufacturers and service providers and preserve their opportunity to compete in the market and innovate, the existing *de minimis* rule will continue to apply to small entities. In addition, in order to ease the burden of transition, the new rule will become applicable to a manufacturer or service provider two years after the latest of: The date the manufacturer or service provider began offering handsets over the air interface, the date the amended rule is published in the **Federal Register,** the date a hearing aid compatibility technical standard is adopted for the relevant operation, or the date a previously small entity no longer meets our small entity definition.

87. In recognition of the special technical challenges of meeting hearing aid compatibility technical standards for handsets with certain desirable form factors operating over the legacy 2G GSM air interface in the 1900 MHz band, the Commission permits companies that would come under the amended *de minimis* rule but for their size to satisfy the hearing aid-compatible handset deployment requirement for GSM using a handset that allows the customer, except for emergency calls to 911, to reduce the maximum output power for GSM operations in the 1900 MHz band in order to meet the RF interference standard. However, wherever a manufacturer or service provider provides the hearing aid compatibility rating for such a handset, it shall indicate that user activation of a special mode is necessary to meet the hearing aid compatibility standard. In addition, the handset manual or product insert must explain how to activate the special mode and that doing so may result in a diminution of coverage. These actions will reduce the regulatory burden on small businesses that do not come under the *de minimis* rule by making it easier to satisfy hearing aid compatibility requirements for this class of handsets, while ensuring that consumers who use hearing aids and cochlear implants have access to a variety of phones and are adequately informed about the functionality and the limitations of their handsets.

88. The Commission amends Section 20.19 to expand its scope for manufacturers such that the rule will apply to all covered handsets that they manufacture for sale and use in the United States, regardless of whether those handsets are offered to service providers, intermediaries, businesses for use by their employees, or directly to the public. Manufacturers will have until 12 months from publication of the rule in the **Federal Register** to come into compliance with it. The Commission finds that this rule change will serve the public interest as a better and more proactive approach to ensure the availability of hearing aid-compatible handsets in the developing handset marketplace, and that no exception to or modification of the rule for small entities is appropriate consistent with

[58] 5 U.S.C. 603(c).

the rule's purpose. The 12-month transition period will ease the burden of coming into compliance for small entities.

6. Report to Congress

89. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[59] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[60]

B. Final Paperwork Reduction Act Analysis

90. The Second Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

91. In this present document, the Commission has assessed the effects of extending to all handsets that incorporate new frequency bands and air interfaces for which hearing aid compatibility technical standards do not yet exist the same counting and disclosure rules that currently apply to handsets with Wi-Fi capability, as well as the disclosure requirements associated with modifying the hearing aid compatibility technical standards for manufacturers and service providers that offer one or two handsets operating over the legacy 2G GSM air interface in the 1900 MHz band. The Commission finds that these disclosure requirements are necessary to ensure that consumers are adequately informed of the underlying measures that, taken as a whole, will increase the availability of innovative handsets and reduce the burden of complying with the hearing aid compatibility requirements for entities including small businesses.

C. Congressional Review Act

92. The Commission will include a copy of this Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Accessible Formats

93. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

VI. Ordering Clauses

94. *It is ordered* that, pursuant to the authority of Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, this Second Report and Order *is hereby adopted.*

95. *It is further ordered* that Part 20 of the Commission's Rules, 47 CFR part 20, is *amended* as specified in Appendix B, effective October 8, 2010, except for the amendments to Section 20.19(f), which contain an information collection that is subject to OMB approval.

96. *It is further ordered* that the information collection contained in this Second Report and Order *will become effective* following approval by the Office of Management and Budget. The Commission will publish a document at a later date establishing the effective date.

97. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Incorporation by reference, and Radio.

Bulah P. Wheeler,

Deputy Manager, Federal Communications Commission.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, 332, and 710 unless otherwise noted.

§ 20.19 [Amended]

■ 2. Amend § 20.19 as follows:
■ a. Redesignate paragraphs (a)(3)(i) through (a)(3)(iv) as (a)(3)(ii) through (a)(3)(v);
■ b. Add new paragraph (a)(3)(i);
■ c. Revise paragraph (b) introductory text;
■ d. Revise paragraph (c)(1)(i);
■ e. Add paragraph (c)(1)(ii)(C);
■ f. Revise paragraph (d)(1) introductory text;
■ g. Redesignate paragraph (e)(1) as (e)(1)(i);
■ h. Add paragraphs (e)(1)(ii) and (iii);
■ i. Revise paragraph (f)(2)
■ j. Add paragraph (f)(3); and;
■ k. Revise paragraph (k)(1).

§ 20.19 Hearing aid-compatible mobile handsets.

(a) * * *
(3) * * *

(i) *Handset* refers to a device used in delivery of the services specified in paragraph (a)(1) of this section that contains a built-in speaker and is typically held to the ear in any of its ordinary uses.

* * * * *

(b) *Hearing aid compatibility; technical standards.* A wireless handset used for digital CMRS only over the frequency bands and air interfaces referenced in paragraph (a)(1) of this section is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard(s) set forth in paragraphs (b)(1) and (b)(2) of this section for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of this chapter. A wireless handset that incorporates an air interface or operates over a frequency band for which no technical standards are stated in ANSI C63.19–2007 (June 8, 2007) is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

* * * * *

(c) * * *
(1) * * *

(i) *Number of hearing aid-compatible handset models offered.* For each digital air interface for which it offers wireless handsets in the United States or

[59] *See* 5 U.S.C. 801(a)(1)(A).

[60] *See* 5 U.S.C. 604(b).

imported for use in the United States, each manufacturer of wireless handsets must offer handset models that comply with paragraph (b)(1) of this section. Prior to September 8, 2011, handset models for purposes of this paragraph include only models offered to service providers in the United States.

(A) If it offers four to six models, at least two of those handset models must comply with the requirements set forth in paragraph (b)(1) of this section.

(B) If it offers more than six models, at least one-third of those handset models (rounded down to the nearest whole number) must comply with the requirements set forth in paragraph (b)(1) of this section.

(ii) * * *

(C) Beginning September 10, 2012, for manufacturers that together with their parent, subsidiary, or affiliate companies under common ownership or control, have had more than 750 employees for at least two years and that offer two models over an air interface for which they have been offering handsets for at least two years, at least one new model rated M3 or higher shall be introduced every other calendar year.

* * * * *

(d) * * *

(1) *Manufacturers.* Each manufacturer offering to service providers four or more handset models, and beginning September 8, 2011, each manufacturer offering four or more handset models, in a digital air interface for use in the United States or imported for use in the United States must ensure that it offers to service providers, and beginning September 8, 2011, must ensurel that it offers, at a minimum, the following number of handset models that comply with the requirements set forth in paragraph (b)(2) of this section, whichever number is greater in any given year.

* * * * *

(e) * * *

(1)(i) * * *

(ii) Notwithstanding paragraph (e)(1)(i) of this section, beginning September 10, 2012, manufacturers that have had more than 750 employees for at least two years and service providers that have had more than 1500 employees for at least two years, and that have been offering handsets over an air interface for at least two years, that offer one or two digital wireless handsets in that air interface in the United States must offer at least one handset model compliant with paragraphs (b)(1) and (b)(2) of this section in that air interface, except as provided in paragraph (e)(1)(iii) of this section. Service providers that obtain handsets only from manufacturers that offer one or two digital wireless handset models in an air interface in the United States, and that have had more than 750 employees for at least two years and have offered handsets over that air interface for at least two years, are required to offer at least one handset model in that air interface compliant with paragraphs (b)(1) and (b)(2) of this section, except as provided in paragraph (e)(1)(iii) of this section. For purposes of this paragraph, employees of a parent, subsidiary, or affiliate company under common ownership or control with a manufacturer or service provider are considered employees of the manufacturer or service provider. Manufacturers and service providers covered by this paragraph must also comply with all other requirements of this section.

(iii) Manufacturers and service providers that offer one or two digital handset models that operate over the GSM air interface in the 1900 MHz band may satisfy the requirements of paragraph (e)(1)(ii) of this section by offering at least one handset model that complies with paragraph (b)(2) of this section and that either complies with paragraph (b)(1) of this section or meets the following conditions:

(A) The handset enables the user optionally to reduce the maximum power at which the handset will operate by no more than 2.5 decibels, except for emergency calls to 911, only for GSM operations in the 1900 MHz band;

(B) The handset would comply with paragraph (b)(1) of this section if the power as so reduced were the maximum power at which the handset could operate; and

(C) Customers are informed of the power reduction mode as provided in paragraph (f)(3) of this section. Manufacturers and service providers covered by this paragraph must also comply with all other requirements of this section.

* * * * *

(f) * * *

(2)(i) *Disclosure requirement relating to handsets that operate over an air interface or frequency band without hearing aid compatibility technical standards.* Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that incorporates an air interface or operates over a frequency band for which no technical standards are stated in ANSI C63.19–2007 (June 8, 2007), it discloses to consumers, by clear and effective means (*e.g.,* inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites) that the handset has not been rated for hearing aid compatibility with respect to that operation. This disclosure shall include the following language:

> This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

(ii) However, service providers are not required to include this language in the packaging material for handsets that incorporate a Wi-Fi air interface and that were obtained by the service provider before March 8, 2011, provided that the service provider otherwise discloses by clear and effective means that the handset has not been rated for hearing aid compatibility with respect to Wi-Fi operation.

(3) *Disclosure requirement relating to handsets that allow the user to reduce the maximum power for GSM operation in the 1900 MHz band.* Handsets offered to satisfy paragraph (e)(1)(iii) of this section shall be labeled as meeting an M3 rating. Each manufacturer and service provider shall ensure that, wherever this rating is displayed, it discloses to consumers, by clear and effective means (*e.g.,* inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites), that user activation of a special mode is necessary to meet the hearing aid compatibility standard. In addition, each manufacturer or service provider shall ensure that the device manual or a product insert explains how to activate the special mode and that doing so may result in a reduction of coverage.

* * * * *

(k) *Delegation of rulemaking authority.* (1) The Chief of the Wireless Telecommunications Bureau and the Chief of the Office of Engineering and Technology are delegated authority, by notice-and-comment rulemaking, to issue an order amending this section to the extent necessary to adopt technical standards for additional frequency bands and/or air interfaces upon the establishment of such standards by ANSI Accredited Standards Committee C63™, provided that the standards do

not impose with respect to such frequency bands or air interfaces materially greater obligations than those imposed on other services subject to this section. Any new obligations on manufacturers and Tier I carriers pursuant to paragraphs (c) through (i) of this section as a result of such standards shall become effective no less than one year after release of the order adopting such standards and any new obligations on other service providers shall become effective no less than 15 months after the release of such order, except that any new obligations on manufacturers and service providers subject to paragraph (e)(1)(ii) of this section shall become effective no less than two years after the release of such order.

* * * * *

[FR Doc. 2010–22253 Filed 9–7–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AG61

Defense Federal Acquisition Regulation Supplement; Acquisition Strategies To Ensure Competition Throughout the Life Cycle of Major Defense Acquisition Programs (DFARS Case 2009–D014)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Weapon Systems Acquisition Reform Act of 2009, to improve the organization and procedures of DoD for the acquisition of major weapon systems.

DATES: *Effective Date:* September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

On May 22, 2009, the Weapon Systems Acquisition Reform Act (Pub. L. 111–23) was enacted to improve the organization and procedures of DoD for the acquisition of major weapon systems. This law establishes new oversight entities within DoD, as well as new and varied weapon system acquisition and management reporting requirements.

Section 202 directs the Secretary of Defense (SECDEF) to ensure that the acquisition strategy for each major defense acquisition program (MDAP) includes: (1) Measures to ensure competition at both the prime contract and subcontract level of the MDAP throughout its life cycle as a means to improve contractor performance; and (2) adequate documentation of the rationale for selection of the subcontractor tier or tiers. It also outlines measures to ensure such competition. Furthermore, it requires the SECDEF: (1) To take specified actions to ensure fair and objective "make-buy" decisions by prime contractors on MDAPs; and (2) whenever a decision regarding the source of repair results in a plan to award a contract for performance of maintenance and sustainment of a major weapon system, to ensure that such contract is awarded on a competitive basis with full consideration of all sources.

An interim rule was published at 75 FR 8272 on February 24, 2010. No comments were received in response to the interim rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the changes are to internal Government organization and operating procedures only. The rule imposes new oversight and reporting requirements internal only to DoD. As such, the rule imposes no changes on contractors doing business with DoD.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 207

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 207 which was published at 75 FR 8272 on February 24, 2010, is adopted as a final rule without change.

[FR Doc. 2010–22230 Filed 9–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 237

RIN 0750–AG72

Defense Federal Acquisition Regulation Supplement; Guidance on Personal Services (DFARS Case 2009–D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to enable further implementation of section 831 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 to require DoD to develop guidance related to personal services contracts.

DATES: *Effective Date:* September 8, 2010.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before November 8, 2010, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2009–D028, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include DFARS Case 2009–D028 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

Section 831 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), Development of Guidance on Personal Services Contracts, required DoD to mitigate the risks associated with personal services by developing guidance enabling contracting officers to better distinguish between personal services and non-personal services. Recommendations by the Office of the DoD Inspector General have highlighted the need for additional clarity in this area.

DFARS parts 211 and 237 are being amended to (1) require that statements of work or performance work statements clearly distinguish between Government employees and contractor employees and (2) ensure that procedures are adopted to prevent contracts from being awarded or administered as unauthorized personal services contracts. These Government procedures include an internal requirement that a program manager, or equivalent, certification that the service contract requirement does not include an unauthorized personal services arrangement be included in the contract file.

DoD reviewed guidance in use throughout the Department, including several checklists currently used. This interim rule adopts best practices and implements a requirement for the program manager, or equivalent, to complete and submit a certification to the contracting officer with a services contract requirement. A new DFARS section 211.106, Purchase descriptions for service contracts, is added to require that purchase descriptions for service contracts clearly distinguish between Government employees and contractor employees. In addition, a new section 237.503, Agency-head responsibilities, is added to require DoD agencies to adopt procedures that (1) ensure service contract requirements are vetted and approved in a manner that will prevent them from being awarded or administered as unauthorized personal services contracts, and (2) require a program manager, or equivalent, certification to be completed and provided to the contracting officer as part of the service contract procurement request, for inclusion in the contract file, that the service contract requirement does not include an unauthorized personal services arrangement, either in the way the work statement is written or in the manner in which the resulting contract will be managed and overseen. The certification requirement is designed to ensure that the prohibitions against personal services contracting in law (*e.g.,* 10 U.S.C. 129b, 5 U.S.C. 3109, or 10 U.S.C. 1091) are not violated.

This is a significant regulatory action, and therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 604.

C. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because section 831 affects only internal government operations and procedures. The interim rule does not impose any additional requirements on small businesses. Therefore, an initial regulatory flexibility analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D028) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule without prior opportunity for public comment pursuant to U.S.C. 418b and FAR 1.501–3(b). This action is necessary because the statute became effective upon enactment on October 14, 2008, and it is imperative that DoD program managers and contracting officers be provided with the means to distinguish between personal and non-personal services. However, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 211 and 237

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 211 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211 and 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Section 211.106 is added to read as follows:

211.106 Purchase descriptions for service contracts.

Agencies shall require that purchase descriptions for service contracts and resulting requirements documents, such as statements of work or performance work statements, include language to provide a clear distinction between Government employees and contractor employees. Service contracts shall require contractor employees to identify themselves as contractor personnel by introducing themselves or being introduced as contractor personnel and by displaying distinguishing badges or other visible identification for meetings with Government personnel. In addition, contracts shall require contractor personnel to appropriately identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

PART 237—SERVICE CONTRACTING

■ 3. Subpart 237.5 is added to read as follows:

Subpart 237.5—Management Oversight of Service Contracts

237.503 Agency-head responsibilities.

(c) The agency head or designee shall employ procedures to ensure that requirements for service contracts are vetted and approved as a safeguard to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract. Contracting officers shall follow the procedures at PGI 237.503, include substantially similar certifications in conjunction with service contract requirements, and place the certification in the contract file. The

program manager or other official responsible for the requirement, at a level specified by the agency, should execute the certification.

[FR Doc. 2010–22226 Filed 9–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

[DFARS Case 2008–D023]

Defense Federal Acquisition Regulation Supplement; Additional Requirements Applicable to Multiyear Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with minor editorial corrections, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the National Defense Authorization Act for Fiscal Year 2008, section 811, entitled "Requirements Applicable to Multiyear Contracts for the Procurement of Major Systems of the Department of Defense."

DATES: *Effective Date:* September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L), DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350. Please cite DFARS Case 2008–D023.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 75 FR 9114 on March 1, 2010, to implement section 811 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), enacted January 28, 2008. The period for public comment closed on April 30, 2010. The interim rule revised DFARS 217.170 and 217.172 to add six new requirements to which the Secretary of Defense must certify in writing when requesting congressional authorization to enter into a multiyear contract for a major defense acquisition program. Among these requirements is the need to certify to certain cost-savings determinations.

DoD received no comments on the interim rule. Therefore, DoD is finalizing the interim rule with minor editorial corrections only.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the additional requirements apply solely to internal Government operating procedures. The rule implements section 811 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which only imposes new responsibilities on the Secretary of Defense when requesting congressional authorization to enter into a multiyear contract for a major defense acquisition program. Therefore, the rule will have no significant cost or administrative impact on contractors or offerors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, the interim rule published at 75 FR 9114 on March 1, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.170 is amended by revising paragraph (b) to read as follows:

217.170 General.

* * * * *

(b) Any requests for increased funding or reprogramming for procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under 217.172(f)(2) (10 U.S.C. 2306b(i)(1)).

* * * * *

■ 3. Section 217.172 is amended by revising paragraphs (d)(2) and (f)(2) introductory text to read as follows:

217.172 Multiyear contracts for supplies.

* * * * *

(d) * * *

(2) In addition, for contracts equal to or greater than $500 million, the head of the contracting activity must determine that the conditions required by paragraphs (f)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (f)(2) of this section (10 U.S.C. 2306b(a)(1)(7)).

* * * * *

(f) * * *

(2) The Secretary of Defense certifies to Congress in writing, by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contracts, that each of the conditions in paragraphs (f)(2)(i) through (vii) of this section is satisfied (10 U.S.C. 2306b(i)(1)(A)–(G).

* * * * *

[FR Doc. 2010–22232 Filed 9–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

Defense Federal Acquisition Regulation Supplement; Payment of Costs Prior to Definitization—Definition of Contract Action (DFARS Case 2009–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the National Defense Authorization Act for Fiscal Year 2010 to amend the definition of "contract action" to include task orders and delivery orders.

DATES: *Effective Date:* September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350. Please cite DFARS Case 2009–D035.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 75 FR 10190 on March 5, 2010, to implement section 812 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), enacted October 28, 2009. Section 812 was entitled "Revision of Defense Supplement Relating to Payment of Costs Prior to Definitization." The interim rule amended the definition of "contract action" at DFARS 217.7401(a) to include task orders and delivery orders. This had the effect of making task orders and delivery orders subject to DoD's policies and procedures for undefinitized contract actions.

The period for public comment closed on May 5, 2010. DoD received no comments on the interim rule. Therefore, DoD is finalizing the interim rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* No comments from small businesses were received during the public comment period, and the changes impose no additional requirements on small businesses that will impact substantially the way they do business with DoD.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 217 which was published at 75 FR 10190 on March 5, 2010, is adopted as a final rule without change.

[FR Doc. 2010–22228 Filed 9–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 227 and 252

RIN 0750–AG50

Defense Federal Acquisition Regulation Supplement; Government Rights in the Design of DoD Vessels (DFARS Case 2008–D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule that amended the Defense Federal Acquisition Regulation Supplement to implement section 825 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 and the Vessel Hull Design Protection Amendments of 2008. Section 825 clarifies the Government's rights in technical data in the designs of a DoD vessel, boat, craft, or components thereof.

DATES: *Effective Date:* September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350. Please cite DFARS Case 2008–D039.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements section 825 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and the Vessel Hull Design Protection Amendments of 2008 (Pub. L. 110–434).

DoD published the interim rule in the **Federal Register** on November 23, 2009 (74 FR 61043). The comment period closed on January 22, 2010. No comments were received. Therefore, DoD is finalizing the interim rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it does not create a significant economic impact on any entity. The rule creates an affirmative grant of appropriate rights in vessel design to the Government. No comments were received with regard to impact on small business.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the DFARS rule does not impose any additional reporting or recordkeeping requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 227 and 252 published at 74 FR 61043 on November 23, 2009, is adopted as final without change.

[FR Doc. 2010–22231 Filed 9–7–10; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 75, No. 173
Wednesday, September 8, 2010

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0068]

Privacy Act of 1974: Implementation of Exemptions United States Citizenship and Immigration Services–012 Citizenship and Immigration Data Repository System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the United States Citizenship and Immigration Services–012 Citizenship and Immigration Data Repository System of Records system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before October 8, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0068, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Donald K. Hawkins (202–272–8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC 20529; or Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

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

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

FOR FURTHER INFORMATION CONTACT: For general questions please contact Donald K. Hawkins (202–272–8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC 20529; for privacy issues please contact Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: USCIS collects personally identifiable information (PII) directly from and about immigrants and nonimmigrants through applications and petitions for the purposes of adjudicating and bestowing immigration benefits. USCIS maintains a number of systems to facilitate these purposes including: the Computer Linked Application Information Management System (CLAIMS 3), CLAIMS 4, the Refugees, Asylum, and Parole System (RAPS), Asylum Pre-screen System (APSS), Re-engineered Naturalization Application Casework System (RNACS), Central Index System (CIS) and the Fraud Detection and National Security Data System (FDNS–DS). As part of the adjudication process, USCIS personnel engage in a number of steps to ensure that an individual is eligible for a requested benefit. One of these steps is the performance of background checks to make certain that an individual is not attempting to obtain the requested benefit by fraudulent means, has not committed a Crime Involving Moral Turpitude and/or does not pose a public safety threat or a threat to national security.

USCIS developed CIDR, hosted on DHS classified networks, in order to make information from these USCIS systems available to authorized USCIS personnel for the purposes of: (1) Vetting USCIS application information for indications of possible immigration fraud and national security concerns; (2) detecting possible fraud and misuse of immigration information or position by USCIS employees, for personal gain or by coercion; and (3) responding to requests for information (RFI) from the DHS Office of Intelligence and Analysis (I&A) and/or federal intelligence and law enforcement community members that are based on classified criteria. CIDR enables authorized USCIS users to more efficiently search multiple USCIS systems from a single entry point, the results of which will be retained in CIDR. CIDR's position on DHS classified networks allows USCIS to securely conduct searches based on classified parameters and searches based on possible fraud and national security concerns.

There are occasions when USICS receives RFIs from members of the Intelligence Community (IC) and Law Enforcement (LE) that are classified. In order to assist with classified investigatory leads and respond to I&A requests, USCIS must conduct searches whose parameters are classified on unclassified data sets. To facilitate a more efficient and secure environment in which to conduct these queries and to store the results, DHS determined that creating mirror copies of its unclassified data sets on the classified side would be the most appropriate solution. CIDR provides the capability to properly conduct and protect classified searches and maintain detailed audit trails of search activities and results. Copying unclassified data from the unclassified systems to a classified site does not render this information classified, only the search parameters and results. CIDR will enable USCIS personnel to perform searches of its non classified data sets in a classified environment, ensuring that the integrity of the classified RFI process is maintained. Based on the results of the searches performed in CIDR, USCIS will produce a response to the RFI, which will include the content of the RFI, information from CIDR that is responsive to the RFI, and any necessary explanations to provide proper context and interpretations of the information provided. These responses will contain PII when de-identified or statistical data cannot satisfy the RFI. These responses will be produced by USCIS personnel as separate electronic documents and sent to I&A in the same manner that the RFI was received; usually via e-mail over the classified e-mail network.

USCIS is proposing to exempt classified information in CIDR from disclosure to a requestor to preserve the

integrity of ongoing counterterrorism, intelligence, or other homeland security activities, pursuant to the Privacy Act. 5 U.S.C. 552a(k)(1) and (2).

Consistent with DHS's information sharing mission, information stored in CIDR may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, foreign, or international governmental agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to establish a new Department of Homeland Security (DHS) system of records notice titled DHS U.S. Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository (CIDR).

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

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

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/USCIS—012 CIDR. Some information in DHS/USCIS—012 CIDR relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating law enforcement, immigration, and intelligence processes; to avoid disclosure of means and methods; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

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

A notice of system of records for DHS/USCIS—012 CIDR is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

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

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

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

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

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

* * * * *

52. United States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository system of records consists of electronic and paper records and will be used by USCIS. United States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities. United States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. Pursuant to 5 U.S.C. 552a(k)(1) and (2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

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

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

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the

interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

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

Dated: September 1, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–22307 Filed 9–7–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2008–001]

RIN 0584–AD85

Food Distribution Program on Indian Reservations: Administrative Funding Allocations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish the requirements regarding the allocation of administrative funds for the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma, both of which are referred to as "FDPIR" in this rulemaking. The rulemaking would propose amendments to FDPIR regulations to ensure that administrative funding is allocated in a fair and equitable manner. The proposed rule would also revise FDPIR regulations to clarify current program requirements relative to the distribution of administrative funds to Indian Tribal Organizations (ITOs) and State agencies.

DATES: To be assured of consideration, comments must be received on or before December 7, 2010.

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule. You may submit comments, identified by Regulatory Identifier Number (RIN) number 0584–AD85, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Preferred method; follow the online instructions for submitting comments on "FNS–2008–001."
- *Fax:* Submit comments by facsimile transmission to Laura Castro at (703) 305–2420.
- *Mail:* Send comments to Laura Castro, Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the above address during regular business hours.

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 substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Laura Castro at the above address or telephone (703) 305–2662. You may also contact Dana Rasmussen at (703) 305–1628, or via e-mail at *Dana.Rasmussen@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Your written comments on this proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain your reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (*see* **DATES**) will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.,* grouping and order of sections, use of headings, and paragraphs) make it clearer or less clear?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

II. Procedural Matters

In the following discussion and regulatory text, the term "State agency," as defined at 7 CFR 253.2, is used to include ITOs authorized to operate FDPIR in accordance with 7 CFR parts 253 and 254.

A. Executive Order 12866, "*Regulatory Planning and Review*"

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. Therefore it was not reviewed by the Office of Management and Budget (OMB).

B. Title 5, United States Code 601–612, "*Regulatory Flexibility Act*"

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this action will not have a significant impact on a substantial number of small entities. While State agencies that administer FDPIR will be affected by this rulemaking, the economic effect will not be significant.

C. Public Law 104–4, "*Unfunded Mandates Reform Act of 1995*" *(UMRA)*

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

effective or least burdensome alternative that achieves the objectives of the rule.

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

D. Executive Order 12372, "*Intergovernmental Review of Federal Programs*"

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice published at 48 FR 29115 on June 24, 1983, the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

E. Executive Order 13132, "*Federalism*"

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

1. Prior Consultation With State and Local Officials

The programs that receive FDPIR administrative funding from FNS' Regional Offices are all Tribal or State-administered, federally-funded programs. On an ongoing basis, the FNS National and Regional Offices have formal and informal discussions related to FDPIR with Tribal and State officials. FNS meets regularly with the Board and the membership of the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR), an association of Tribal and State-appointed FDPIR Program Directors, to discuss issues relating to the program.

This rulemaking proposes regulatory changes regarding the distribution of FDPIR administrative funds to the FNS Regional Offices for allocation to the ITOs and State agencies that administer FDPIR. Section F, *Tribal Consultation,* below, provides additional information on FNS' efforts to work directly with the ITOs and State agencies in the development of the funding methodology proposed in this rule.

2. Nature of Concerns and the Need To Issue This Rule

Current regulations at 7 CFR part 253 do not specify how FDPIR administrative funds must be distributed. For many years, the National Office of the FNS used fixed percentages to allocate FDPIR administrative funds to each of the FNS Regional Offices, which in turn distributed the available funding to FDPIR State agencies. As noted previously, FDPIR State agencies include both ITOs and agencies of state government. The funding methodology did not account for any administrative cost drivers, such as the number of ITOs and State agencies within each Region or the number of individuals served by each ITO/State agency. Therefore, it did not provide a rational basis for allocating funds to the Regional Offices. FDPIR State agencies expressed concern that the methodology did not allocate funds equitably to the FNS Regional Offices, and in turn negatively impacted certain State agencies' ability to adequately administer the program.

3. Extent To Which We Address Those Concerns

FNS has considered the impact of the proposed rule on FDPIR State agencies. FNS does not expect the provisions of this rule to conflict with any State or local laws, regulations, or policies. The intent of this rule is to respond to the concerns of the State agencies by ensuring that funds are allocated to the FNS Regional Offices as fairly as possible; and to ensure that related program requirements with regard to the allocation of administrative funds to State agencies, as well as State agency matching requirements, are clear and easy to understand.

F. Executive Order 13175, "*Tribal Impact Statement*"

This rulemaking proposes regulatory changes regarding the distribution of FDPIR administrative funds to the FNS Regional Offices, which further allocate the funds to the ITOs and State agencies that administer FDPIR. These amendments are intended to ensure that FDPIR administrative funding is distributed to the FNS Regional Offices in a fair and equitable manner. The proposed rule would also revise FDPIR regulations to clarify current program requirements relative to the allocation of administrative funds to ITOs and State agencies. During the course of developing this rule, FNS has taken a number of actions to ensure meaningful and timely input by elected tribal leaders. In 2005 FNS convened a work group comprised of FNS staff and Tribal and State-appointed FDPIR Program Directors representing NAFDPIR and its membership. The work group was asked to develop a proposal(s) for a new funding methodology for the allocation of FDPIR federal administrative funds. The work group conducted its deliberations via 33 conference calls and six face-to-face meetings from May 2005 through October 2007. Discussions were also held at the annual meetings of the membership of NAFDPIR, in which some elected Tribal leaders took part. The work group and FNS solicited written comments from elected Tribal leaders and State officials at various stages of the development of the funding methodology proposed in this rule. In addition to the requests for written comments, FNS hosted public meetings that were held in January 2007 at four locations throughout the country. Elected Tribal leaders and State officials were invited to discuss the proposal to develop a funding methodology at those public meetings. Discussion from the public meetings and written comments submitted to the work group were considered by the work group in the development of its recommendations to FNS' Administrator. On October 19, 2007, the work group presented recommendations for a funding methodology. These recommendations were used to develop the funding methodology proposed in this rule.

In fiscal year 2008, FNS implemented the funding methodology proposed in this rulemaking on a trial basis. FNS solicited comments from elected Tribal leaders and State officials on the impact of the funding methodology in fiscal year 2008 for consideration in determining the funding methodology to be used in fiscal year 2009, pending the development of this proposed rulemaking.

A regulatory work plan was developed in fiscal year 2008 for the development of this proposed rulemaking with the intent of soliciting comments from elected Tribal leaders, State officials, and other interested members of the public in response to the funding methodology implemented in fiscal year 2008 and proposed in this rule.

A summary of concerns raised by tribal officials, the agency's need to issue this regulation, and an explanation of how these concerns have been addressed is thoroughly discussed in section III of the preamble.

G. Executive Order 12988, "*Civil Justice Reform*"

This proposed rule has been reviewed under Executive Order 12988, Civil

Justice Reform. Although the provisions of this rule are not expected to conflict with any State or local laws, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

H. Department Regulation 4300–4, "Civil Rights Impact Analysis"

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods on the basis of an individual's or group's race, color, national origin, sex, age, political beliefs, religious creed, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

I. Title 44, United States Code, Chapter 35, "Paperwork Reduction Act"

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule does not contain any new information collection requirements subject to review and approval by OMB under the Paperwork Reduction Act of 1995. However, previous burdens for 7 CFR part 253 information collections associated with this rule have been approved under OMB control number 0584–0293.

J. Public Law 107–347, "E-Government Act Compliance"

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

III. Background and Discussion of the Proposed Rule

The proposed rule would amend the regulations for FDPIR at 7 CFR 253.11 and impact 7 CFR part 254, which cross-references 7 CFR part 253.

A. Prior Administrative Funding Allocation Methodology

Currently, FDPIR regulations at 7 CFR 253.11 do not specify a methodology for the allocation of administrative funds. Under the traditional practice, the FNS National Office allocated funds to the FNS Regional Offices using fixed percentages. These funding percentages varied from one Region to the next, did not change for many years prior to fiscal year 2008, and did not reflect cost drivers such as each Region's share of national program participation and current number of ITOs and State agencies. Regional Offices then allocated each State agency its share of administrative funds based on negotiations between the two entities. Because FNS Regional Offices received funding without regard to the effect of cost drivers, similar State agencies in different Regions could have received significantly different funding levels. This in turn could have impacted program operations and potentially resulted in inconsistent or uneven service to participants.

B. FDPIR Funding Methodology Work Group and Public Meetings

To address concerns raised by FDPIR State agencies over potential FDPIR administrative funding inequities, a funding methodology work group was convened by FNS in 2005. The work group, which was comprised of FDPIR program representatives, including NAFDPIR officers, and FNS staff, was charged with developing a new methodology for the distribution of FDPIR administrative funds that would be fair, objective, and easy to understand.

After conducting data collection and analysis for several months, the work group completed a preliminary proposal in November 2006 and submitted it to elected Tribal leaders and State officials for written comment. Elected Tribal leaders and State officials were also invited to attend public meetings held in January 2007 at four locations across the country in order to discuss the work group's preliminary proposal—Green Bay, Wisconsin, Oklahoma City, Oklahoma, Rapid City, South Dakota, and San Francisco, California. Over 100 elected Tribal leaders, State officials, and FDPIR program officials attended the public meetings and/or submitted written comments on the preliminary proposals.

The work group met in April 2007 to review the written comments and transcripts of the four public meetings. The comments reflected a diversity of opinion among elected Tribal leaders and State officials. From April through October 2007, the work group diligently attempted to address the issues and concerns presented in the comments, and resolve any differences of opinion within the work group as well. The work group submitted its final recommendations to former FNS Administrator in a letter dated October 19, 2007. The work group was unable to reach consensus on a single approach, thus it provided three funding allocation methodology proposals. All of the work group members supported at least one of the proposals.

Under the work group's first proposal, individual State agencies would have submitted annual budgets to their respective FNS Regional Offices that reflected their individual program needs. If the total amount requested by all State agencies combined exceeded the amount of the available funding in any fiscal year, the FNS National Office would have reduced each Region's total request by an equal percentage.

Under the work group's second proposal, the FNS National Office would have allocated funds to the Regional Offices based on three weighted factors: Each Region's share of the national participation level averaged over the most recent three-year period; the current number of programs in each Region; and the current number of programs in each Region with tailgate operations, home delivery, and/or multiple warehouses or other issuance methods. As a background, tailgate operations are mobile distribution systems where food packages are delivered to a site or sites nearer to clients' residences rather than being distributed solely out of a central location. Under the work group's second proposal, the FNS Regional Offices would have negotiated budgets with their State agencies within the amount of funds made available.

Under the work group's third proposal, the FNS National Office would have employed a formula to determine a basic grant amount that each State agency would receive. Each State agency would have had the opportunity to negotiate with their FNS Regional Office for supplemental funds to meet their individual needs. Under this proposal, 85 percent of the available funding each year would have been allocated to the State agencies in the form of a basic grant. The basic grant

would have been determined by two factors: A fixed base amount that would be adjusted annually by an inflation factor; and an amount based on each State agency's share of the national participation level averaged over the most recent three-year period. The FNS National Office would have allocated the remaining 15 percent of available funding to the FNS Regional Offices based on each Region's share of the national participation level averaged over the most recent three-year period. That funding would have been used by the FNS Regional Offices to supplement the basic grants to the State agencies based on individual negotiations.

C. Pilot Funding Allocation Methodology and Comment Solicitation

In response to the work group's proposals, FNS developed an administrative funding allocation methodology that was based in large part on the work group's second proposal, to be piloted in fiscal year 2008. The methodology, which has been used in FDPIR since fiscal year 2008, allocates funding to the extent practicable to the Regional Offices based on two weighted components: Each Region's share of the total number of participants nationally, and each Region's share of the total current number of State agencies administering the program nationally. Proportionally more weight is given to the first element, program participation, which FNS believes to be a major cost driver in the administration of FDPIR. Sixty-five percent of all administrative funds available nationally are allocated to FNS Regional Offices in proportion to their share of the number of participants nationally, averaged over the three previous fiscal years. In order to recognize the fixed costs common to programs of all participation levels, the remaining 35 percent of all administrative funds available nationally are allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

By selecting these two factors, FNS intended to design a funding methodology that would provide each FNS Regional Office with the funding to support the operational costs of all of its programs, particularly those impacted by the number of participants served by each State agency. FNS believes that this methodology is based on objective and current cost drivers and provides a reasonable basis for allocating administrative funds.

FNS did not include the factor in the work group's second proposal which would have allocated funds based on each Region's share of tailgate operations, home deliveries, and/or multiple warehouses. FNS recognizes that such operations are important program components and contribute significantly to the cost of administering a program. Some State agencies expend considerable resources in conducting tailgate operations and maintaining multiple warehouses. However, this factor, as proposed by the work group, did not differentiate among the degree of service provided. In addition, exclusion of this factor was not expected to significantly impact Regional allocations because 90 percent of FDPIR programs have some degree of tailgate operations, home delivery, and/or multiple warehouses.

As a result, FNS opted to disregard this factor and provide proportionally greater emphasis to the other two factors outlined above. FNS believes that this approach offers a proper balance by providing each FNS Regional Office with funding to support the operational costs of all of its programs in relation to the number of participants served by each State agency.

The decision to pilot a new funding methodology in fiscal year 2008 was prompted by Congressional action. Recognizing the funding inequities in FDPIR, Congress appropriated a total of $34.7 million in FDPIR administrative funding for fiscal year 2008, an increase of nearly $7.7 million over the fiscal year 2007 level. Report language from both the House of Representatives and the Senate (House Report 110–258, accompanying H.R. 3161, and Senate Committee Report 110–134, accompanying S. 1859, respectively) communicated Congress' expectation that this funding be used "to address current inequities among tribes in the allocation of funds * * *." On October 31, 2007, FNS announced the decision to pilot the funding methodology in a letter to elected Tribal leaders and State officials. In that letter, FNS sought comments with regard to the impact of the piloted methodology on the program. The comments received were considered in the development of this proposed rule.

D. Comments Received and Analysis

FNS received written comments from three elected Tribal leaders, one State official, and two FDPIR program administrators regarding FNS' decision. Five commenters supported the methodology as implemented, while one commenter opposed the allocation methodology. Of the five commenters supporting the funding allocation methodology, four specifically cited sufficient or improved State agency funding levels as one of the reasons for their support. Three of the five commenters cited equity or fairness as another factor in their support of the methodology. Three supporting commenters cited the funding methodology's positive impact on the program services provided to participants.

One commenter opposed the manner in which administrative funds were allocated to the Regional Offices in fiscal year 2008. The commenter stated three key objections: FNS did not consult with the Tribes and State agencies prior to pilot implementation; the funding methodology implemented in fiscal year 2008 was not one of the three methodologies recommended by the work group; and FNS failed to address the work group's recommendation regarding food storage and transportation costs for the seven independent FDPIR programs serviced by the Montana and North Dakota State agencies.

Regarding the commenter's first objection referencing Tribal consultation, the work group and FNS consulted with elected Tribal leaders and State officials on multiple occasions prior to the piloting the methodology, as outlined above. The decision to pilot the methodology was made in response to the Congressional expectation that FNS address funding inequities with the additional funds provided in fiscal year 2008. The pilot permitted FNS to test the new methodology in fiscal year 2008 in order to meet this Congressional expectation, while at the same time continuing to consult with elected Tribal leaders and State officials. The consultation process continues in this proposed rulemaking.

Regarding the commenter's second objection, the commenter was correct in asserting that the funding methodology implemented was not one of the three methodologies recommended by the work group. However, as described above, the funding methodology which was implemented was based in large part on one of the work group's three proposals. The pilot included the two work group-proposed factors regarding the proportionate Regional Office shares of national program participation and the current number of State administering agencies. FNS removed the work group-proposed factor which would have allocated funds based on each Region's share of tailgate operations, home deliveries, and/or multiple warehouses, because it did not differentiate among the degree of service provided and was not expected to

significantly impact Regional allocations.

Regarding the commenter's final objection, currently, the Montana and North Dakota State agencies maintain central warehouses to receive, store, and transport USDA foods to local programs that they administer. In addition, these two State agencies perform ordering, storage, and delivery functions for seven programs that are not under the administration of the two State agencies. Both Montana and North Dakota receive FDPIR administrative funds to support the Federal share of costs for warehousing and transporting USDA foods to both the independent programs and those programs that they administer directly. Because the two State agencies are performing functions similar to those performed by FNS, the work group recommended that Montana's and North Dakota's warehousing and transportation costs for the seven independent programs be paid with Federal funds appropriated for the purchase and delivery of USDA foods (*i.e.,* "food funds") rather than administrative funds.

However, funds appropriated for the purchase and delivery of USDA foods may only be used for food shipments to and from a USDA-contracted warehouse, or directly to a FDPIR program operator. The seven programs are too small to regularly take full-truck shipments directly from a vendor without significantly exceeding maximum inventory requirements and risking foods going out of condition. Therefore, the only way to shift their warehousing and delivery costs from administrative to food dollars would be to require that these independent operators be served by a USDA-contracted warehouse rather than the Montana and North Dakota warehouses.

FNS researched this approach and found no evidence that the seven programs would receive better service from the national warehouse. Serving these independent programs through a USDA-contracted warehouse would increase costs significantly. Also, the Montana and North Dakota State agencies expressed objections in writing to this proposal. Since there is no evidence indicating that the seven independent programs would receive better service from the national warehouse, this was not considered a workable solution.

As a result of the increase in the program appropriation and the pilot funding allocation methodology, the FNS Mountain Plains Regional Office, which provides administrative funds to Montana and North Dakota, received a sufficient increase in funding in fiscal year 2008 to fully meet the budget requests of all State agencies. On April 22, 2008, the Director, FNS Food Distribution Division advised the Montana and North Dakota State agencies and the affected FDPIR program operators that FNS did not intend to alter current warehousing and delivery arrangements for the seven independent programs served by Montana and North Dakota. They were also advised that the FNS National Office will work with the Mountain Plains Regional Office to ensure that future administrative funding needs are met.

E. Proposed Regulatory Revisions

Based on the comments submitted on the pilot implementation of the funding methodology, FNS is proposing revisions to Federal regulations at 7 CFR 253.11 to clarify existing program requirements relative to the allocation of appropriated FDPIR administrative funds to the FNS Regional Offices, and the further allocation of such funds to State agencies. FNS is also proposing revisions to 7 CFR 253.11 in order to make clear State agency administrative funding matching requirements. Additional guidance is contained in FNS Instruction 700–1, Rev. 2, FNS Instruction 716–4, Rev. 1, and FNS Handbook 501.

First, FNS proposes to amend 7 CFR 253.11 by revising the title of that section to read "Administrative funds" rather than "Administrative funds for State agencies." This proposed revision would provide greater flexibility, permitting further explanation of the FNS National Office administrative funding allocations to FNS Regional Offices. This revision is necessary to more clearly detail the funding allocation process.

As an overview, this rule proposes to amend 7 CFR 253.11(a) by removing the current regulatory language from that section, and replacing it with language specific to how administrative funds are allocated to FNS Regional Offices. This rule further proposes to redesignate paragraphs (b) through (h) of current 7 CFR 253.11 as paragraphs (d) through (j). Applicable provisions contained in current 7 CFR 253.11(a) would be rewritten in plain language and set out in the newly designated and proposed paragraphs (b) and (c). Additional information reflecting current program requirements would be added to newly designated paragraph (c) of this proposed section as well.

In new section 253.11(a), we are proposing to clarify that administrative funds would be allocated to the FNS Regional Offices in the following manner: Sixty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the number of participants nationally, averaged over the three previous fiscal years; and thirty-five percent of all administrative funds available nationally would be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

As an outcome of the pilot implementation, FNS identified the need to incorporate regulatory language to ensure that the funding methodology does not have undue negative impact on individual FDPIR State agencies. FNS recognized that funding must be made available to support participation of new State agencies for which prior participation data is not available. Based on State agency total approved budgets, FNS also recognized the need to ensure that funding not needed by one FNS Regional Office could be distributed to other FNS Regional Offices. Finally, FNS recognized that some flexibility is required within the funding allocation methodology described above in order for it to meet 75 percent of State agency administrative costs approved by the FNS Regional Offices, should funding levels permit. Therefore, this proposed rule would permit the FNS National Office to allocate administrative funds to the FNS Regional Offices based on the proportionate shares of national program participation and the current number of State agencies administering the program, "to the extent practicable * * *." This language would permit FNS some limited flexibility to meet individual State agency administrative funding needs not reflected under the two weighted factors. However, similar to current practice, the FNS National Office would allocate the vast majority of all administrative funds to the FNS Regional Offices based on each Region's proportionate shares of national program participation and the current number of State agencies administering the program.

Regarding the current requirement at 7 CFR 253.11(a) that annual budget submissions and revisions must be approved by FNS, we propose to relocate this requirement to the new proposed section 253.11(b) with the clarification that the budget request must be sent to the FNS Regional Office for approval. This proposed requirement is consistent with FNS Instruction 700–1, Rev. 2, which gives each FNS Regional Administrator the authority to review State agency budget submissions. The current provision at 7

CFR 253.11(a) requiring State agencies to submit only those administrative costs which are allowable under 7 CFR part 277 would be relocated to proposed section 253.11(b) as well. This requirement is currently contained in FNS Instruction 716–4, Rev. 1, and FNS Handbook 501. Finally, the current provision at 7 CFR 253.11(a) which specifies that, within funding limitations, FNS provides State agencies with administrative funds necessary to meet 75 percent of approved administrative costs would be revised in plain language and relocated to proposed section 253.11(b), with the clarification that FNS Regional Offices provide the administrative funds to State agencies. This reflects current program practice.

The newly designated section 253.11(c) would set forth the State agency matching requirements. Paragraph (c)(1) of this proposed section would specify that the State agency matching requirement is 25 percent of approved administrative costs, and that both cash and non-cash contributions may be used to meet the matching requirement. This is currently required via FNS Instruction 716–4, Rev. 1. For the sake of clarity, paragraph (c)(1) of this proposed section would list the criteria for allowable cash and non-cash contributions, similar to what is currently provided in 7 CFR part 277.

The current provision at 7 CFR 253.11(a) regarding requests for Federal matching rates that exceed 75 percent and compelling justification would be rewritten in plain language and relocated to the newly designated 7 CFR 253.11(c)(2). In paragraph (c)(2) of this proposed section, consistent with FNS Instruction 716–4, Rev. 1, and FNS Handbook 501, we require the State agency to submit a summary statement and supporting financial documents to the FNS Regional Office when providing compelling justification in its budget proposal. Furthermore, we propose to add a provision which gives the FNS Regional Office the discretion to provide additional administrative funds beyond 75 percent. This is consistent with current program practice, and the Regional Office authority to approve State agency budget requests per proposed section 253.11(b). Finally, the types of acceptable compelling justification provided in current 7 CFR 253.11(a) and FNS Instruction 716–4, Rev. 1, would be specified in paragraph (c)(2) of this proposed section. Per proposed paragraph (c)(2) of this section, compelling justification may include but would not be limited to: the need for additional administrative funding for startup costs during the first year of program operation, or the need to prevent a reduction in the level of necessary and reasonable program services provided.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 253 is proposed to be amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

2. In § 253.11:

a. Revise the heading of this section;

b. Remove paragraph (a);

c. Redesignate paragraphs (b) through (h) as paragraphs (d) through (j); and

d. Add new paragraphs (a) through (c).

The revisions and additions read as follows:

§ 253.11 Administrative funds.

(a) *Allocation of administrative funds to FNS Regional Offices.* Each fiscal year, after enactment of a program appropriation for the full fiscal year and apportionment of funds by the Office of Management and Budget, administrative funds will be allocated to each FNS Regional Office for further allocation to State agencies. To the extent practicable, administrative funds will be allocated to FNS Regional Offices in the following manner:

(1) 65 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the number of participants nationally, averaged over the three previous fiscal years; and

(2) 35 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

(b) *Allocation of administrative funds to State agencies.* Prior to receiving administrative funds, State agencies must submit a proposed budget reflecting planned administrative costs to the appropriate FNS Regional Office for approval. Planned administrative costs must be allowable under part 277 of this chapter. To the extent that funding levels permit, the FNS Regional Office provides each State agency administrative funds necessary to cover 75 percent of approved administrative costs.

(c) *State agency matching requirement.*

(1) Unless Federal administrative funding is approved at a rate higher than 75 percent in accordance with paragraph (c)(2) of this section, each State agency must contribute 25 percent of its total approved administrative costs. Cash or non-cash contributions, including third party in-kind contributions, may be used to meet the State agency matching requirement. To be considered allowable towards meeting this requirement, both cash and non-cash contributions must meet the criteria established under Part 277 of this chapter. State agency contributions must:

(i) Be verifiable;

(ii) Not be contributed for another federally-assisted program, unless authorized by Federal legislation;

(iii) Be necessary and reasonable to accomplish program objectives;

(iv) Be allowable under part 277 of this chapter;

(v) Not be paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(vi) Be included in the approved budget.

(2) The State agency may request a waiver to reduce its matching requirement below 25 percent. In its proposed budget, the State agency must submit compelling justification to the appropriate FNS Regional Office that it is unable to meet the 25 percent matching rate and that additional administrative funds are necessary for the effective operation of the program. The FNS Regional Office may, at its discretion, provide additional administrative funds beyond 75 percent of approved administrative costs to a State agency that provides compelling justification. In its compelling justification submission, the State agency must include a summary statement and recent financial documents, in accordance with FNS instructions. Compelling justification may include but is not limited to:

(i) The need for additional administrative funding for startup costs during the first year of program operation; or

(ii) The need to prevent a reduction in the level of necessary and reasonable program services provided.

* * * * *

Dated: August 31, 2010.

Jeffrey Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2010–22247 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0852; Directorate Identifier 2010–NM–005–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 and A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability of the airplane].

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

DATES: We must receive comments on this proposed AD by October 25, 2010.

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

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0852; Directorate Identifier 2010–NM–005–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

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

Discussion

On September 29, 2005, we issued AD 2005–20–32, Amendment 39–14329 (70 FR 59263, October 12, 2005). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2005–20–32, we have determined that the existing inspection of the upper and lower elevator skin panels needs to be a repetitive inspection in order to adequately address the identified unsafe condition. We have also added airplane models to the applicability of this proposed AD, and we have identified additional affected elevators in Table 1 of this proposed AD. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0255, dated December 1, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability of the airplane].

DGAC [Direction Générale de l'Aviation Civile] France AD F–2004–118 R1 (EASA approval N. 2004–10125) required a one-time inspection of elevators skin panels installed on MSN up to 091, to detect potential liquid ingress and repair as necessary, in accordance with Airbus inspection service bulletins (ISB) A330–55–3032 and A340–55–4029.

Following the AD issuance, further in-service experience has shown that in order to ensure the structural integrity of all A330/A340 elevators skin panels with sandwich construction (excluding A340–500/–600), it is necessary to perform the same elevators panels inspection and to repair as necessary, but in a repetitive manner.

The aim of this AD, which supersedes DGAC France AD F–2004–118 R1, is to require this additional inspection program in order to maintain the structural integrity of the elevators.

The required actions include repetitive special detailed inspections and repetitive re-protection of the elevator assembly. The special detailed inspections consist of the following actions:

• Repetitive endoscopic inspections for damage (such as a scratch, disbonding, or a tear) of the inner skin of the upper and lower elevator panels on both sides of the airplane, and if any damage is found, contacting Airbus for instructions and doing the instructions.

• Repetitive tap tests for debonding in the inner side of the upper and lower elevator panels on both sides, and if any debonding is found, contacting Airbus for instructions and doing the instructions.

• Repetitive thermographic inspections for indications of trapped water in the upper and lower elevator panels on both sides of the airplane, and if any indications of trapped water are found, doing applicable corrective actions (including, but not limited to, repeating the thermographic inspection to determine the size of the damaged area, doing a general visual inspection to determine if there is an existing repair, contacting Airbus for instructions and doing the instructions, re-protecting the affected surfaces, and repairing holes).

• Repetitively re-protect the elevator assembly (including doing a general visual inspection to determine damage and repair if necessary, a general visual inspection to determine if the drainage holes are clean and not obstructed and cleaning the drainage holes if necessary, a general visual inspection to determine the status of the static discharges contour and sealing the static discharges contour if necessary, and installing front spar access hole covers).

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A330–55–3039 and A340–55–4035, both including Appendix 1, both dated August 7, 2009. The actions described in the service information are intended to correct the unsafe condition identified in the MCAI.

Explanation of Change to This AD

We have removed the "Service Bulletin Reference" paragraph from the "Restatement of Requirements of AD 2005–20–32" section of this AD. That paragraph was identified as paragraph (f) in AD 2005–20–32. Instead, we have provided the full service bulletin citations throughout this AD.

Change to Existing AD

This proposed AD would retain the requirements of AD 2005–20–32. Since AD 2005–20–32 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2005–20–32	Corresponding requirement in this proposed AD
paragraph (f)(1)	paragraph (g)
paragraph (f)(2)	paragraph (h)
paragraph (g)	paragraph (i)
paragraph (h)	paragraph (j)
paragraph (i)	paragraph (k)

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 56 products of U.S. registry.

The actions that are required by AD 2005–20–32 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 14 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $66,640, or $1,190 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14329 (70 FR 59263, October 12, 2005) and adding the following new AD:

Airbus: Docket No. FAA–2010–0852; Directorate Identifier 2010–NM–005–AD.

Comments Due Date

(a) We must receive comments by October 25, 2010.

Affected ADs

(b) This AD supersedes AD 2005–20–32, Amendment 39–14329.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, and A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, if equipped with any of the elevator part numbers (P/N) identified in Table 1 of this AD ("ZZ" indicates a number from 00 up to 99 inclusive).

TABLE 1—ELEVATOR PART NUMBERS

For the left-hand elevator	For the right-hand elevator
P/N F55280000000ZZ	P/N F55280000001ZZ
P/N F55280000002ZZ	P/N F55280000003ZZ
P/N F55280000004ZZ	P/N F55280000005ZZ
P/N F55280000006ZZ	P/N F55280000007ZZ
P/N F55280000008ZZ	P/N F55280000009ZZ
P/N F55280000012ZZ	P/N F55280000013ZZ
P/N F55280002000ZZ	P/N F55280002001ZZ
P/N F55280005000ZZ	P/N F55280005001ZZ
P/N F55280005002ZZ	P/N F55280005003ZZ
P/N F55280005004ZZ	P/N F55280005005ZZ

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability of the airplane].

Compliance

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

Restatement of Requirements of AD 2005–20–32

Service Bulletin Exceptions for Airbus Service Bulletin A330–55–3032 and Airbus Service Bulletin A340–55–4029

(g) Where Airbus Service Bulletin A330–55–3032 and Airbus Service Bulletin A340–55–4029, both dated December 22, 2003, recommend contacting Airbus for appropriate action: Before further flight, repair the condition according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent), or EASA (or its delegated agent).

(h) Although Airbus Service Bulletin A330–55–3032 and Airbus Service Bulletin A340–55–4029, both dated December 22, 2003, specify to submit certain information to the manufacturer, this AD does not include that requirement.

Determining Part Number, Serial Number

(i) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes: At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, perform an inspection to determine the part number and serial number of the left- and right-hand elevator assemblies. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of each elevator assembly can be conclusively determined from that review. If neither elevator assembly has a part number and serial number combination identified in Table 2 of this AD, no further action is required by this paragraph. If either elevator assembly has a part number and serial number combination identified in Table 2 of this AD, do paragraph (j) of this AD. Doing the actions in paragraph (k) of this AD terminates the requirements of paragraph (i) of this AD.

(1) Within 10 years after the date of the first flight of the airplane, or before the accumulation of 12,000 total flight cycles, whichever is first.

(2) Within 18 months after the November 16, 2005 (the effective date of AD 2005–20–32).

TABLE 2—AFFECTED ELEVATOR PART NUMBERS AND SERIAL NUMBERS IN AD 2005–20–32

Part	Affected part numbers	Affected serial numbers
Left-hand elevator assembly	F55280000000, F55280000004	CG1002 through CG1091 inclusive, CG1093, CG1094, CG2001.
Right-hand elevator assembly	F55280000001, F55280000005	CG1002 through CG1094 inclusive, CG2001.

Inspections

(j) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes: If the left- or right-hand elevator assembly has a part number and serial number combination identified in Table 2 of this AD, before further flight after accomplishing paragraph (i) of this AD, do the actions in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, as applicable. Doing the actions in paragraph (k) of this AD terminates the requirements of paragraph (j) of this AD.

(1) Perform an endoscopic inspection to detect damage (such as a scratch, disbonding, or a tear), and a tap test and a thermographic inspection to detect signs of moisture penetration, to the upper and lower elevator panels on both sides of the airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes), or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated December 22, 2003, as applicable, except as provided by paragraphs (g) and (h) of this AD.

(2) If any damage is found, before further flight, do all applicable corrective actions (including, but not limited to, repeating the thermographic inspection to determine the size of the damaged area, and performing a tap test around the areas where moisture is indicated), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes), or Airbus Service Bulletin A340–

55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes) both dated December 22, 2003, as applicable, except as provided by paragraphs (g) and (h) of this AD.

(3) Re-protect the elevator assembly (including performing a general visual inspection to determine if the drainage holes are clean, a general visual inspection to determine the condition of the sealant covering the static discharges contour, and applicable corrective actions), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes), or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated December 22, 2003, as applicable, except as provided by paragraphs (g) and (h) of this AD.

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

New Requirements of This AD

Repetitive Inspection

(k) Within the applicable time in paragraph (k)(1) or (k)(2) of this AD, do a special detailed inspection for discrepancies (scratches, debonding, tears, and indications of trapped water), on the elevator upper and lower skin panels, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3039 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes), or A340–55–4035 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated August 7, 2009. Repeat the inspections thereafter at intervals not to exceed 72 months from the date of the elevator's first flight after the last inspection. Doing the special detailed inspection specified in this paragraph terminates the requirements of paragraphs (i) and (j) of this AD.

(1) For elevators identified in Table 1 of this AD that have not been inspected in accordance with Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes), or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes): Within 144 months since the date of the elevator's first flight on any airplane, or within 24 months after the effective date of this AD, whichever occurs later.

(2) For elevators identified in Table 1 of this AD that have been inspected in accordance with Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes), or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes): Within 72 months since the date of the elevator's first flight on any airplane after accomplishing Airbus Service Bulletin A330–55–3032, or Airbus Service Bulletin A340–55–4029, or within 24 months after the effective date of this AD, whichever occurs later.

Corrective Action

(l) If any discrepancy is found during any inspection required by paragraph (k) of this AD, before further flight, do all applicable corrective actions (including applicable inspections and repair), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3039 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or A340–55–4035 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated August 7, 2009; or contact Airbus for instructions and follow their corrective actions.

Re-Protection

(m) For elevators on which any action required by paragraph (k) or (l) of this AD is done: Before the elevator's next flight, do a re-protection (including all applicable inspections and corrective actions), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3039 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes), or A340–55–4035 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated August 7, 2009.

Reporting

(n) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (k) of this AD to Airbus, as specified in Appendix 1 of Airbus Mandatory Service Bulletin A330–55–3039, dated August 7, 2009; or Airbus Mandatory Service Bulletin A340–55–4035, dated August 7, 2009; as applicable; at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD. The report must include the information identified in Appendix 1 of Airbus Mandatory Service Bulletin A330–55–3039, dated August 7, 2009; or Airbus Mandatory Service Bulletin A340–55–4035, dated August 7, 2009; as applicable.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(o) As of the effective date of this AD, do not install any elevator identified in Table 1 of this AD on any airplane, unless the elevator has been inspected in accordance with paragraph (l) of this AD and all applicable corrective actions have been done.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(q) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0255, dated December 1, 2009; and the service bulletins listed in Table 3 of this AD, for related information.

TABLE 3—SERVICE BULLETINS

Document	Date
Airbus Mandatory Service Bulletin A330–55–3039, including Appendix 1	August 7, 2009.
Airbus Mandatory Service Bulletin A340–55–4035, including Appendix 1	August 7, 2009.

TABLE 3—SERVICE BULLETINS—Continued

Document	Date
Airbus Service Bulletin A330–55–3032	December 22, 2003.
Airbus Service Bulletin A340–55–4029	December 22, 2003.

Issued in Renton, Washington, on August 30, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–22275 Filed 9–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 744, and 746

[Docket No. 100719301–0303–02]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking public comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by October 8, 2010.

ADDRESSES: Comments may be sent by e-mail to *publiccomments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include the phrase "FPBEC Comment" in the subject line of the e-mail message or on the envelope if submitting comments on paper. All comments must be in writing (either e-mail or on paper). All comments, including Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter will be a matter of public record and will be available for public inspection and copying. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Director, Foreign Policy Division, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, telephone 202–482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http://www.bis.doc.gov/news/2010/2010_fpreport.pdf* and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

SUPPLEMENTARY INFORMATION: Foreign policy-based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended, (50 U.S.C. app. sections 2401–2420 (2000)) (EAA). The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR (15 CFR parts 730–774), including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Other Special Controls). These controls apply to a range of countries, items, activities and persons, including: Entities acting contrary to the national security or foreign policy interests of the United States (§ 744.11); certain general purpose microprocessors for "military end-uses" and "military end-users" (§ 744.17); significant items (SI): Hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15); crime control and detection items (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms and related items based on the Organization of American States Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Munitions included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability items (§ 742.6); equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included on the list of those chemicals controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); restrictions on exports and reexports to certain persons designated as proliferators of weapons of mass destruction (§ 744.8); communication intercepting devices, software and technology (§ 742.13); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.4, 746.7, and 746.9); certain entities in Russia (§ 744.10); individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14); certain persons designated by Executive Order 13315 ("Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members") (§ 744.18); certain sanctioned entities (§ 744.20); and certain cameras to be used by military end-users or incorporated into a military commodity (§ 744.9). Attention is also given in this context to the controls on nuclear-related commodities, technology, end-uses and end-users (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act (42 U.S.C. 2139a).

Under the provisions of section 6 of the EAA, export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of Notice of August 12, 2010 (75 FR 50681 (August 16, 2010)), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)). The Department of Commerce, insofar as appropriate, follows the provisions of section 6 of the EAA by reviewing its foreign policy-based export controls, requesting public comments on such controls, and preparing a report to be submitted to

Congress. In January 2010, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect. BIS is now soliciting public comment on the effects of extending or modifying the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve their intended foreign policy purposes, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy objective of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall U.S. policy toward the country subject to the controls;

4. Whether the reaction of other countries to the extension of such controls is not likely to render the controls ineffective in achieving the intended foreign policy objective or be counterproductive to U.S. foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to effectively enforce the controls.

BIS is particularly interested in receiving comments on the economic impact of proliferation controls. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.,* those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do U.S. trade partners have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners that are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, and requirements for pre- and post-shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on trade or acquisitions by intended targets of the controls.

7. Data or other information on the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All comments received in response to this notice will be displayed on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.*

Dated: August 30, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–21955 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–146893–02, REG–115037–00]

RIN 1545–BJ32

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws proposed regulations published in the **Federal Register** on September 10, 2003 (68 FR 53448), related to the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible that is owned by another controlled party. The IRS and Treasury Department are withdrawing those proposed regulations because they have been superseded.

FOR FURTHER INFORMATION CONTACT: Gregory A. Spring (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2003, the Treasury Department and the IRS published in the **Federal Register** (68 FR 53448, REG–146893–02 and REG–115037–00) proposed regulations relating to the treatment of controlled services transactions and the allocation of income from intangible property, in particular with respect to contributions by a controlled party to the value of intangible property owned by another controlled party. On August 4, 2006, the Treasury Department and the IRS published in the **Federal Register** (71 FR 44466, TD 9278, REG–146893–02, REG–115037–00, and REG–138603–03) temporary regulations relating to the treatment of controlled services transactions, the allocation of income from intangible property, and stewardship expenses under Treas. Reg. § 1.861–8(e)(4). A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (71 FR 44247). Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on October 27, 2006. That notice of proposed rulemaking superseded the proposed regulations published in the **Federal Register** on September 10, 2003.

On August 4, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 38830, TD 9456) final regulations that are generally consistent with the proposed regulations that were published on August 4, 2006, in the **Federal Register** (71 FR 44247), and removed the corresponding temporary regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping

requirements, Social Security, Unemployment compensation.

Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–146893–02 and REG–115037–00) published in the **Federal Register** on September 10, 2003 (68 FR 53448) is withdrawn.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–22239 Filed 9–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2570

RIN 1210–AA98

Prohibited Transaction Exemption Procedures; Employee Benefit Plans

Correction

In proposed rule document 2010–21073 beginning on page 53172 in the issue of Monday, August 30, 2010, make the following correction:

§2570.43 [Corrected]

On page 53190, in §2570.43, in the second column, footnote 6 is corrected to read as set forth below:

[6] The applicant will fill in the room number of the Office of Exemption Determinations. As of the date of this final regulation, the room number of the Office of Exemption Determinations is N–5700.

[FR Doc. C1–2010–21073 Filed 9–7–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho; Proposed Correction

AGENCY: Forest Service, USDA.

ACTION: Proposed administrative correction; request for comment.

SUMMARY: The Forest Service, U.S. Department of Agriculture (USDA), is proposing to make administrative corrections affecting Big Creek Fringe, French Creek, Placer Creek, Secesh, and Smith Creek Idaho Roadless Areas on the Payette National Forest. These corrections will remedy two errors regarding regulatory classification and mapping that concern Forest Plan Special Areas (Big Creek and French Creek). Notice is given pursuant to 36 CFR 294.27(a), that the Chief proposes to issue an administrative correction after a 30-day public notice and opportunity to comment.

DATES: Comments must be received, in writing, on or before October 8, 2010.

ADDRESSES: Written comments concerning this proposed administrative correction should be addressed to Idaho Roadless Area Payette Correction, Northern Region USFS, Federal Building, 200 East Broadway, P.O. Box 7669, Missoula, MT 59807–7669. Comments may also be sent via e-mail to *comments-northern-regional-office@fs.fed.us,* or via facsimile to 406–329–3314.

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 *http://roadless.fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Idaho Roadless Coordinator Joan Dickerson at 406–329–3314. Additional information concerning this administrative correction, including the proposed corrected maps, may be obtained on the Internet at *http://roadless.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 following correction is proposed to fix technical errors in the Idaho Roadless Area Rule published in the **Federal Register** October 16, 2008 (73 FR 61456) and associated maps. These corrections were discussed with the State of Idaho Implementation Committee on September 11, 2009, and no concerns were expressed by the Committee. These corrections would facilitate the development of the Big Creek Fuels Reduction Project on the Krassel Ranger District, Payette National Forest. The project is being developed to reduce fuels in the wildland urban interface around the community of Big Creek. The corrections are needed so the appropriate treatment may be designed. The public should be aware that the indexing of management themes for individual Idaho Roadless Areas set forth in § 294.29 is an approximation (to the nearest hundred acres).

Corrections Regarding Big Creek

The Idaho Roadless Rule and associated maps mistakenly identify a Forest Plan Special Area (Wild and Scenic River) along Big Creek. During the Idaho rulemaking, Forest Plan Special Areas were identified where the management is governed by specific Agency directives and forest plan direction. The 2003 Southwest Idaho Ecogroup Land and Resource Management Plan Final Environmental Impact Statement (FEIS) included an eligibility study for Big Creek. However, the Agency's Record of Decision did not find Big Creek eligible for Wild and Scenic River designation. As the Payette Forest Plan did not establish a special management area, the Idaho rulemaking and associated maps should be conformed to remove this erroneous classification. These proposed corrections occur in T20N, R8E, sections 13–14 and 22–24; T20N, R9E, sections 2–3, 10, 15, and 17–18; T21N, R9E, sections 13, 23–24, 26, and 34–36, Boise Meridian.

Summary of Proposed Changes

The rule and associated maps will be corrected as follows:

- Big Creek Fringe Idaho Roadless Area: Change 365 acres of Forest Plan Special Area to Backcountry/Restoration and deletes 3 acres of private ownership. The FPSA classification will be removed in the rule.
- Placer Creek Idaho Roadless Area: Change 98 acres of Forest Plan Special Area to Backcountry/Restoration; and 14 acres of Forest Plan Special Area to Primitive. The FPSA classification will be removed in the rule.
- Secesh Idaho Roadless Area: Change 1,086 acres of Forest Plan Special Area to Backcountry/Restoration.
- Smith Creek Roadless Area: Change 14 acres of Forest Plan Special Area to Primitive.

Correction Regarding French Creek

The Idaho Roadless Rule erroneously did not identify an existing Forest Plan Special area for the Wild and Scenic River corridor along Lake Creek in the French Creek Idaho Roadless Area. The 2003 Southwest Idaho Ecogroup Land and Resource Management Plan Final Environmental Impact Statement included a suitability study for the Secesh River, including Lake Creek. The Record of Decision found the Secesh River, including Lake Creek, eligible for Wild and Scenic River designation and the Payette National Forest Land and Resource Management Plans established a special management area. Therefore,

the proposal is to correct the associated maps for this area. The correction involves moving 1,000 acres of Forest Plan Special Area to Backcountry/Restoration to and occurs in T22N, R4E, sections 10, 15, 22, 26–27, and 35, Boise Meridian.

Dated: August 30, 2010.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2010–22151 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–11–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. ATBCB 2010–0004]

RIN 3014–AA38

Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of public hearings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold two public hearings on a proposed rule to revise and update its accessibility guidelines for buses, over-the-road buses, and vans.

DATES: The first public hearing will be held in Chicago, IL on Thursday, September 30, 2010 from 9:30 a.m. to 12 p.m. (CST). The second public hearing will be in Washington, DC on Monday, November 8, 2010 from 9:30 a.m. to 12 p.m. (EST). To pre-register to testify, please contact Kathy Johnson at (202) 272–0041 or *Johnson@access-board.gov.*

ADDRESSES: The first public hearing will be held at the Courtyard Marriott Magnificent Mile, 165 East Ontario Street, Ontario Rooms B and C, Chicago, IL 60611. The second public hearing will be held at the Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jim Pecht, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004. Telephone (202) 272–0021. E-mail *pecht@access-board.gov.*

SUPPLEMENTARY INFORMATION: On July 26, 2010, the Access Board published a notice of proposed rulemaking (NPRM) in the **Federal Register** to revise and update its accessibility guidelines for buses, over-the-road buses, and vans. 75 FR 43748 (July 26, 2010). The comment period on the proposed rule ends on November 23, 2010. The Access Board will hold two public hearings on the proposed rule during the comment period. The dates and locations of the public hearings are provided in this notice. The public hearing locations are accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided at the public hearings. For the comfort of other participants, persons attending the public hearings are requested to refrain from using perfume, cologne, and other fragrances. To pre-register to testify, please contact Kathy Johnson at (202) 272–0041 or *Johnson@access-board.gov.*

David M. Capozzi,

Executive Director.

[FR Doc. 2010–22248 Filed 9–7–10; 8:45 am]

BILLING CODE 8150–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1253, 1254, and 1280

[NARA–10–0004]

RIN 3095–AB68

Changes to NARA Facilities' Hours of Operation

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration (NARA) is proposing to revise its regulations that provide NARA facilities' hours of operation. The proposed regulations will remove NARA facilities' hours of operation from the Code of Federal Regulations (CFR) and establish procedures that NARA offices must follow when changing facilities' hours of operation. The proposed procedures will provide the public with advance notice of any proposed changes in hours and will include justification for the change in writing. Note that there are no proposed changes to hours of operation at any NARA facility at this time.

DATES: Comments on the proposed rule must be received by November 8, 2010.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Stuart Culy on (301) 837–0970 or Laura McCarthy on (301) 837–3023.

SUPPLEMENTARY INFORMATION: NARA facilities' operating hours are currently published in 36 CFR parts 1253, 1254 and 1280. Any proposed changes to facility operating hours are made through revisions to the CFR, which include publishing the proposed changes in the **Federal Register** for public notice and comment. The proposed revisions are open for comment for 60 days and after the comment period closes and resolution of any comments received the proposed changes are made final by publication of the final rule in the **Federal Register.** The hours of operation published in the CFR are also available on *http://www.archives.gov,* NARA's official Web site; by calling a dedicated telephone number for each facility that provides the public with the facilities' operating hours; and posted locally at each facility.

Proposed Revisions to the Current Regulations

NARA is proposing to remove all facilities' hours of operation from our regulations and instead direct individuals to obtain that information from *http://www.archives.gov,* NARA's official Web site; dedicated telephone numbers; and local postings. The removal of the operating hours from the CFR will enable individual facilities to tailor their operating hours to their customers' needs in a more flexible and timely manner. Individuals will continue to be able to obtain hours of operation information at a facility's physical location and via telephone, including out-going voice messaging systems.

Because the authority to change hours will reside with each locality, we are proposing to revise our regulations to incorporate a process for changing hours of operation that will provide the public with advance notice of a change in hours and will include justification for the change in writing. The procedures include posting the proposed changes at the facility in a public area; on *http://www.archives.gov,* NARA's official Web site; and on other online sites on which

the facility may have a specific presence.

Comments and Suggestions From NARA Staff and Public

NARA sought input regarding these proposed changes from its staff. All five staff members who offered input agreed with the proposed changes. Multiple staff suggested minor changes to the text. One staff member was concerned that NARA's Web site would be the public's only method of determining a facility's hours of operation, but as noted above, individuals also have the option of calling a dedicated telephone number for the hours of operation or see the hours posted at the facility. Another staff member gave suggestions for using templates at all facilities so that communicating proposed changes in hours would be consistent nationwide.

Before preparing the proposed revisions, we also sought suggestions from the public on how to improve communication with the public about proposed changes to facility operating hours. Two members of the public were concerned that the public should be informed in full why changes in hours of operation were being made. One of those same individuals and a third member of the public suggested that changes in hours of operation be communicated through a variety of outlets. We agree with these suggestions, and we believe our proposed notification method will provide an explanation and offer the public a method of commenting on the proposed changes. These are the objectives of this proposed rule, and are addressed specifically therein. This third individual also suggested that a facility, once it has changed its hours, be required to maintain those hours for a minimum of six months. While a specific timeframe is not included in this proposal, we feel that the concern is addressed in the proposed rule which prevents arbitrary changes and requiring evidence of a business need to change the hours of operation.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects Federal agencies and individual researchers. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Parts 1253, 1254 and 1280

Archives and records, Buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend 36 CFR parts 1253, 1254 and 1280 to read as follows:

1. Revise part 1253 to read as follows:

PART 1253—LOCATION OF NARA FACILITIES AND HOURS OF USE

Sec.

Authority: 44 U.S.C. 2104(a).

§ 1253.1 National Archives Building.

The National Archives Building is located at 700 Pennsylvania Avenue, NW., Washington, DC 20408. Hours for the Research Center and the Central Research Room are posted at *http://www.archives.gov.* The exhibit areas' hours of operation are also posted at *http://www.archives.gov.* Last admission to the exhibit areas of the building will be no later than 30 minutes before the stated closing hour. The phone number for the National Archives Building is 202–357–5000.

§ 1253.2 National Archives at College Park.

The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740–6001. Hours for the Research Center are posted at *http://www.archives.gov.* The phone number for the Research Center is 800–234–8861.

§ 1253.3 Presidential Libraries.

Hours for the Presidential libraries' research rooms are posted at *http://www.archives.gov.* The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library which is only closed December 25). For more specific information about museum hours, please contact the libraries directly or visit the NARA Web site at *http://www.archives.gov.* Contact information for each library is as follows:

(a) Herbert Hoover Library is located at 210 Parkside Dr., West Branch, IA (mailing address: PO Box 488, West Branch, IA 52358–0488). The phone number is 319–643–5301 and the fax number is 319–643–6045. The e-mail address is *hoover.library@nara.gov.*

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 800–FDR–VISIT or 845–486–7770 and the fax number is 845–486–1147. The e-mail address is *roosevelt.library@nara.gov.*

(c) Harry S. Truman Library is located at 500 W. U.S. Hwy 24, Independence, MO 64050–1798. The phone number is 800–833–1225 or 816–268–8200 and the fax number is 816–268–8295. The e-mail address is *truman.library@nara.gov.*

(d) Dwight D. Eisenhower Library is located at 200 SE. Fourth Street, Abilene, KS 67410–2900. The phone number is 877–RING–IKE or 785–263–4751 and the fax number is 785–263–6718. The e-mail address is *eisenhower.library@nara.gov.*

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 866–JFK–1960 or 617–514–1600 and the fax number is 617–514–1652. The e-mail address is *kennedy.library@nara.gov.*

(f) Lyndon Baines Johnson Library and Museum is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–721–0200 and the fax number is 512–721–0170. The e-mail address is *johnson.library@nara.gov.*

(g) Richard Nixon Library, California is located at 18001 Yorba Linda Boulevard, Yorba Linda, CA 92886–3903. The phone number is 714–983–9120 and the fax number is 714–983–9111. The e-mail address is *nixon@nara.gov.* Richard Nixon Library, Maryland is located at 8601 Adelphi Road, College Park, MD 20740–6001. The phone number is 301–837–3290 and the fax number is 301–837–3202. The e-mail address is *nixon@nara.gov.*

(h) Gerald R. Ford Library is located at 1000 Beal Avenue, Ann Arbor, MI 48109–2114. The phone number is 734–205–0555 and the fax number is 734–205–0571. The e-mail address is *ford.library@nara.gov.* Gerald R. Ford Museum is located at 303 Pearl St., Grand Rapids, MI 49504–5353. The phone number is 616–254–0400 and the fax number is 616–254–0386. The e-mail address is *ford.museum@nara.gov.*

(i) Jimmy Carter Library is located at 441 Freedom Parkway, Atlanta, GA 30307–1498. The phone number is 404–865–7100 and the fax number is 404–865–7102. The e-mail address is *carter.library@nara.gov.*

(j) Ronald Reagan Library is located at 40 Presidential Dr., Simi Valley, CA

93065–0699. The phone number is 800–410–8354 or 805–577–4000 and the fax number is 805–577–4074. The e-mail address is *reagan.library@nara.gov.*

(k) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979–691–4000 and the fax number is 979–691–4050. The e-mail address is *bush.library@nara.gov.*

(l) William J. Clinton Library is located at 1200 President Clinton Avenue, Little Rock, AR 72201. The phone number is 501–374–4242 and the fax number is 501–244–2883. The e-mail address is *clinton.library@nara.gov.*

§ 1253.4 Washington National Records Center.

Washington National Records Center is located at 4205 Suitland Road, Suitland, MD (mailing address: Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001). The hours are posted at *http://www.archives.gov.* The phone number is 301–778–1600.

§ 1253.5 National Personnel Records Center.

(a) *Military Personnel Records.* NARA—National Personnel Records Center—Military Personnel Records is located at 9700 Page Ave., St. Louis, MO 63132–5100. The hours are posted at *http://www.archives.gov.*

(b) *Civilian Personnel Records.* NARA—National Personnel Records Center—Civilian Personnel Records is located at 111 Winnebago St., St. Louis, MO 63118–4199. The hours are posted at *http://www.archives.gov*

§ 1253.6 Records Centers.

Hours for records center research rooms are posted at *http://www.archives.gov*.

Contact Information for Each Center is as Follows:

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The telephone number is 781–663–0139.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 02101. The telephone number is 413–236–3600.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The telephone number is 215–305–2000.

(d) NARA—Southeast Region (Atlanta) is located at 4712 Southpark Blvd., Ellenwood, GA 30294. The telephone number is 404–736–2820.

(e) NARA—Great Lakes Region (Dayton) is located at 3150 Springboro Road, Dayton, OH, 45439. The telephone number is 937–425–0600.

(f) NARA—Great Lakes Region (Dayton-Miamisburg) is located at 8801 Kingsridge Drive, Dayton, OH 45458. The telephone number is (937) 425–0601.

(g) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The telephone number is 773–948–9000.

(h) NARA—Central Plains Region (Lee's Summit, MO) is located at 200 Space Center Drive, Lee's Summit, MO 64064–1182. The telephone number is 816–823–6272.

(i) NARA—Central Plains Region (Lenexa) is located at 17501 W. 98th Street, Lenexa, KS 66219. The telephone number is 913–563–7600.

(j) NARA—Southwest Region (Fort Worth) is located at 1400 John Burgess Drive, Fort Worth, Texas 76140. The telephone number is 817–551–2000.

(k) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The telephone number is 303–407–5700.

(l) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The telephone number is 650–238–3500.

(m) NARA—Pacific Region (Riverside) is located at 23123 Cajalco Road, Perris, CA 92570–7298. The telephone number is 951–956–2000.

(n) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way, NE., Seattle, WA 98115–7999. The telephone number is 206–336–5115.

§ 1253.7 Regional Archives.

Hours for regional archives research rooms, including extended hours for microfilm research only, are posted at *http://www.archives.gov*. Contact information for each regional archives facility is as follows:

(a) The National Archives at Boston is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452. The telephone number is 781–663–0144 or Toll Free 1–866–406–2379. The National Archives at Boston, Pittsfield Annex is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The telephone number is 413–236–3600.

(b) The National Archives at New York City is located at 201 Varick St., New York, NY 10014–4811 (entrance is on Houston Street, between Varick and Hudson). The telephone number is 212–401–1620 or Toll Free 1–866–840–1752.

(c) The National Archives at Philadelphia is located at the Robert N.C. Nix Federal Building, 900 Market St., Philadelphia, PA 19107–4292 (entrance is on Chestnut Street between 9th and 10th Streets). The telephone number is 215–606–0100.

(d) The National Archives at Atlanta is located at 5780 Jonesboro Road, Morrow, GA 30260. The telephone number is 770–968–2100.

(e) The National Archives at Chicago is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The telephone number is 773–948–9000.

(f) The National Archives at Kansas City is located at 400 West Pershing Road, Kansas City, MO 64108. The telephone number is 816–268–8000.

(g) The National Archives at Fort Worth is located at 501 West Felix St., Bldg. 1, Dock 1, Fort Worth, TX (Mailing address: P.O. Box 6216, Fort Worth, TX 76115–0216). The telephone number is 817–334–5525.

(h) The National Archives at Denver: The textual research room is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. The telephone number is 303–407–5740. The microfilm research room is located at Building 46, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. (Mailing address: PO Box 25307, Denver, CO 80225–0307). The telephone number is 303–407–5751.

(i) The National Archives at Riverside is located at 23123 Cajalco Road, Perris, CA 92570–7298. The telephone number is 951–956–2000.

(j) The National Archives at San Francisco is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The telephone number is 650–238–3501.

(k) The National Archives at Seattle is located at 6125 Sand Point Way, NE., Seattle, WA 98115–7999. The telephone number is 206–336–5115.

(l) The National Archives at Anchorage is located at 654 West Third Avenue, Anchorage, AK 99501–2145. The telephone number is 907–261–7820.

(m) The National Archives at St. Louis, the National Personnel Records Center archival research room is located at 9700 Page Ave., St. Louis, MO 63132–5100. The telephone number is 314–801–9195.

§ 1253.8 Federal Register.

The location and business hours of the Office of the Federal Register are posted at *http://www.archives.gov,* and codified in 1 CFR 2.3.

§ 1253.9 Federal holidays.

(a) NARA research rooms are closed on all Federal holidays.

(b) The exhibit areas in the National Archives Building are closed on Thanksgiving and December 25.

(c) The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library which is only closed December 25).

§ 1253.10 Notification process for changes in hours.

(a) NARA will follow the procedure outlined below when proposing to change hours of operations for research rooms, exhibit areas and museums, except as noted in § 1253.10(d).

(b) Changing hours of operations for research rooms, exhibit areas and museums may not be arbitrary. Proposed changes must be documented by evidence of a business need to change the hours of operation.

(c) The notification process must proceed as follows:

(1) Post a notice on *http://www.archives.gov*.

(2) Post notices in areas visible to the public in their research room, exhibit areas or museum.

(3) Issue a press release, e-mail notification, or other means normally used by that unit to notify the public of events at their location.

(4) These notices will provide written determination justifying the change in hours.

(d) In the event that emergency changes to hours of operations for research rooms, exhibit areas and museums are necessary, including but not limited to inclement weather, NARA units will give as much advance notice to the public as possible. Emergency notification will be posted at *http://www.archives.gov*.

PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS

2. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

3. Amend § 1254.4 by revising paragraph (b) to read as follows:

§ 1254.4 Where and when are documents available to me for research?

* * * * *

(b) The locations of NARA's research rooms are shown in part 1253 of this chapter. Hours for research rooms are posted at *http://www.archives.gov*. Contact our facilities directly for information about their particular holdings. A facility or unit director may authorize that documents be made available at times other than the times specified.

* * * * *

PART 1280—USE OF NARA FACILITIES

4. The authority citation for part 1280 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

5. Revise § 1280.62 to read as follows:

§ 1280.62 When are the exhibit areas in the National Archives Building open?

The exhibit areas' hours of operation are posted at *http://www.archives.gov.* Last admission to the exhibit areas of the building will be no later than 30 minutes before the stated closing hour. The Archivist of the United States reserves the authority to close the exhibit areas to the public at any time for special events or other purposes. The building is closed on Thanksgiving and December 25.

6. Revise § 1280.92 to read as follows:

§ 1280.92 When are the Presidential library museums open to the public?

The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library which is only closed December 25). For more specific information about museum hours, please contact the libraries directly or visit the NARA Web site at *http://www.archives.gov.* Hours for the Presidential libraries' research rooms are also posted at *http://www.archives.gov.*

Dated: August 31, 2010.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2010–22336 Filed 9–7–10; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 07–250; FCC 10–145]

Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission seeks comment on revisions to the Commission's wireless hearing aid compatibility rules. The Commission initiates this proceeding to ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of devices without experiencing disabling interference or other technical obstacles.

DATES: Interested parties may file comments on or before October 25, 2010, and reply comments on or before November 22, 2010.

ADDRESSES: You may submit comments, identified by WT Docket No. 07–250; FCC 10–145, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Borkowski, Wireless Telecommunications Bureau, (202) 418–0626, e-mail *John.Borkowski@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WT Docket No. 07–250; FCC 10–145, adopted August 5, 2010, and released on August 5, 2010. This summary should be read with its companion document, the Policy Statement and Second Report and Order summary published elsewhere in this issue of the **Federal Register**. The full text of the FNPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the Further Notice also may be obtained via the Commission's Electronic Comment

Filing System (ECFS) by entering the docket number WT Docket No. 07–250. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Further Notice of Proposed Rulemaking

I. Introduction

In this FNPRM the Commission seeks comment on potential changes to its hearing aid compatibility rules in three respects. First, the Commission proposes to extend the scope of the rules beyond the current category of Commercial Mobile Radio Service (CMRS) to include handsets used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public. The Commission seeks comment on this proposal, on whether considerations of technological feasibility or marketability prevent application of its hearing aid compatibility requirements to any class of these handsets, and on what transition period is appropriate for applying the requirements to newly covered handsets. Second, the Commission seeks further comment on whether to extend its in-store testing requirement beyond retail stores owned or operated by service providers to some or all other retail outlets. Third, the Commission seeks comment on whether to extend to all circumstances the ability to meet hearing aid compatibility standards for radio frequency (RF) interference reduction for GSM operations in the 1900 MHz band through software that enables the user to reduce maximum power output by up to 2.5 decibels (dB).

II. Discussion

A. Extension of Hearing Aid Compatibility Rules to New Technologies and Networks

2. The Commission has concluded that its wireless hearing aid compatibility rules must provide people who use hearing aids and cochlear implants with continuing access to the most advanced and innovative communications technologies as they develop, while at the same time maximizing the conditions for innovation and investment. Consistent with this principle, the Commission proposes that its hearing aid compatibility requirements should apply to all customer equipment used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear, so long as meeting hearing aid compatibility standards is technologically feasible and would not increase costs to an extent that would preclude successful marketing.

3. *Statutory Scope.* First, the Commission proposes to find that the scope of the Hearing Aid Compatibility Act broadly encompasses devices used to provide voice communications. The Hearing Aid Compatibility Act, 47 U.S.C. 610, directs the Commission to establish regulations to ensure reasonable access by persons with hearing loss to "telephone service." To achieve this end, the Act directs that the Commission require "telephones" to meet hearing aid compatibility standards. The Act provides exemptions for, among other things, "telephones used with public mobile services" and "telephones used with private radio services," but stipulates, that the Commission should periodically review these exemptions and revoke or limit them if necessary to reflect developments over time in technology and usage patterns. The Commission modified the exemption for wireless phones in 2003.

4. Neither the Hearing Aid Compatibility Act nor the broader Communications Act defines the terms "telephone" or "telephone service." In view of the other provisions in the Act, however, the Commission proposes to interpret the term "telephone," as used in the Hearing Aid Compatibility Act, to encompass anything that is commonly understood to be a telephone or to provide telephone service, as that understanding may evolve over time, regardless of regulatory classifications evoked elsewhere in the Communications Act. The Commission seeks comment on this proposed finding and whether such a reading best fulfills the Congressional intent that "all persons should have available the best telephone service which is technologically and economically feasible." Moreover, the Commission seeks comment on whether an evolving definition of "telephone," for purposes of the Hearing Aid Compatibility Act, is consistent with the directive that the Commission revoke or limit the exemptions for public mobile services and private radio services over time to reflect developments in technology and usage patterns.

5. Through the Hearing Aid Compatibility Act, Congress charged the Commission with the responsibility of establishing regulations as necessary to ensure access to telephone service by persons with hearing loss. As cell phone use became integrated into everyday American life, the Commission lifted the prior exemption for digital wireless telephones and subjected them to hearing aid compatibility requirements under its rules. The Commission proposes to find that to carry out Congress's mandate to ensure access to telephone service by persons with hearing loss, it would serve the public interest to interpret the definition of telephone to include wireless handsets that are used for voice communications among members of the public or a substantial portion of the public, regardless of whether the services provisioned through the handset may fall beyond the currently covered category of CMRS. The Commission seeks comment on this proposed finding.

6. In addition, the Commission proposes to find that this broad interpretation of the definition of telephone should include multi-use devices that can function as traditional telephones typically used by being held to the ear, but which may have other capabilities and serve additional purposes. While the Commission recognizes that rendering the telephone feature of such a device hearing aid-compatible may require adjustments to other features over which the Commission might otherwise not have jurisdiction, the Commission proposes to find that under these circumstances, the Commission nevertheless would have authority to require adjustments to both telephone features and other aspects of the device in order to render the device hearing aid-compatible. Under the Hearing Aid Compatibility Act, the Commission is specifically directed to establish such regulations as are necessary to ensure access to telephone service by persons with hearing loss. To the extent achievement of this goal may require imposing hearing aid compatibility requirements on multi-use devices with telephonic capabilities, as described above, the Commission proposes to find that it has jurisdiction to require hearing aid compatibility for such devices, and the Commission seeks comment on this proposed finding.

7. *Scope of Proposed Rule.* The Commission's proposal herein to extend the scope of the hearing aid compatibility rules is limited to wireless handsets that afford an opportunity to communicate by voice with members of the public or with users of a network that is open to the public or a substantial portion of the public. Thus, in a manner broadly consistent with the distinction drawn in the Hearing Aid Compatibility Act between "public

mobile services" and "private radio services," the Commission proposes not to extend the rules to certain non-interconnected systems that are used solely for internal communications, such as public safety or dispatch networks. While the Commission recognizes that there may be important interests in affording access to these systems to employees who use hearing aids, the Commission tentatively concludes that given the very different circumstances of the market for these handsets, and in the absence of an existing universe of handsets meeting hearing aid compatibility standards, the burdens on manufacturers and system operators of satisfying hearing aid compatibility requirements would outweigh the public benefits. The Commission seeks comment on this analysis, and in particular on whether the four criteria for revoking or limiting the wireless exemption are satisfied for any such internal systems.

8. At the same time, the Commission's proposal would include all otherwise covered handsets that are used for voice communication with members of the public or a substantial portion of the public, including those that may not be interconnected with the public switched telephone network but can access another network that is open to members of the public. To the extent a handset otherwise used for internal communications can also be used for voice communications with members of the public outside the internal network, it would also be covered under this proposal. In addition, this proposal would cover handsets used for Mobile Satellite Service (MSS) that otherwise fall within the scope of the rule. In addressing the four criteria set forth below, commenters should consider whether the circumstances surrounding these or any other classes of handset should cause such handsets to be excluded from the rule.

9. *Statutory Criteria.* Under the Hearing Aid Compatibility Act, the Commission is to revoke or limit the wireless exemption if four criteria are satisfied: (1) Such revocation or limitation is in the public interest; (2) continuation of the exemption without such revocation or limitation would have an adverse effect on individuals with hearing loss; (3) compliance with the requirements adopted is technologically feasible for the telephones to which the exemption applies; and (4) compliance with the requirements adopted would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed. The Commission seeks comment on whether these criteria are met with respect to handsets used for voice communications with members of the public or a substantial portion of the public.

10. *Adverse Effect on People with Hearing Loss.* The Commission proposes to find that failure to extend hearing aid compatibility requirements broadly to handsets used for voice communications with members of the public or a substantial portion of the public would have an adverse effect on people with hearing loss. In the *2003 Hearing Aid Compatibility Order,*[1] the Commission determined that continuing to exempt handsets providing certain CMRS from hearing aid compatibility requirements would have an adverse effect on individuals with hearing loss because the lack of hearing aid-compatible digital phones rendered them unable to take advantage of features of these phones that were becoming increasingly central to American life. The Commission proposes to find that this is now true broadly for the range of handsets used to provide wireless voice communications, including those operating over new and developing technologies. If these new handsets are not made hearing aid-compatible, consumers with hearing loss would be largely denied the opportunity to use advanced functionalities and services that are rapidly becoming commonplace in our society. Given the rapid pace of technological innovation and the development of new modes of wireless voice communication, the Commission is concerned about the consequences of waiting until a particular technology is in widespread use before beginning a proceeding to determine that lack of access to that technology adversely affects individuals with hearing loss. Rather, the Commission suggests that it is the inability to access innovative technologies as they develop that has an adverse effect. The Commission therefore proposes, in order to encourage manufacturers to consider hearing aid compatibility at the earliest stages of the product design process, to establish a broad scope for hearing aid compatibility obligations that is not dependent on particular forms of network technology. The Commission proposes to find that this broad scope is necessary to fulfill the goal of the Hearing Aid Compatibility Act that people who use hearing aids and cochlear implants have access to the fullest feasible extent to all means of voice communication. The Commission seeks comment on this analysis.

11. *Public Interest.* The Commission also proposes to find that expanding the scope of its hearing aid compatibility requirements as described would serve the public interest. In 2003, the Commission found that modifying the wireless hearing aid compatibility exemption promoted the public interest because, among other reasons, it enabled people with hearing loss to enjoy the public safety and other benefits of digital wireless phones and it enabled all consumers to communicate more easily with those who have hearing loss. The Hearing Aid Compatibility Act makes clear that consumers with hearing loss should be afforded equal access to communications networks to the fullest extent feasible. To ensure the public interest is served in such fashion, the Commission's stated policy is to encourage manufacturers to consider hearing aid compatibility at the earliest stages of the product design process. Commenters should address the Commission's proposed finding that further modification of the exemption to reach handsets using new technologies is in the public interest today.

12. In addition, the Commission is unconvinced to date by arguments that applying hearing aid compatibility requirements to MSS would not confer significant public benefits. To the contrary, even if MSS has relatively few consumer users, both users who subscribe as individuals and those who are provided access to MSS by their employers would benefit from the option to obtain hearing aid-compatible telephones. Furthermore, the usage of MSS may increase. Indeed, due to its ubiquitous coverage and its resistance to disruption from terrestrial disasters, in some situations MSS has important advantages over terrestrial wireless service. Therefore, the Commission proposes to find that failure to apply hearing aid compatibility requirements to MSS handsets would adversely affect individuals with hearing loss, and that it would serve the public interest to ensure that individuals with hearing loss have access to hearing aid-compatible MSS handsets. The Commission seeks comment on this analysis.

13. *Technological Feasibility.* In the *2003 Hearing Aid Compatibility Order*, the Commission found that meeting hearing aid compatibility standards was technologically feasible for the telephones covered by that order in large part because several handsets were already on the market that met those

[1] The Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket 01–309, *Report and Order,* 18 FCC Rcd 16753 (2003) (*2003 Hearing Aid Compatibility Order*).

standards. To the extent that handsets are currently on the market or are planned for introduction that fall within the rule coverage that the Commission proposes today, but that are not covered by the existing rule, the Commission seeks comment on whether they would meet the existing American National Standards Institute (ANSI) standard (or a similar performance standard, for frequency bands and air interfaces that are not addressed by the existing standard). Moreover, because the hearing aid compatibility standards are already being met for handsets that operate on a variety of 2G and 3G air interfaces over two well separated frequency bands, the Commission considers it likely, in the absence of evidence to the contrary, that the same standards could also be met for handsets used for similar services that are not within the class of currently covered CMRS. While the Commission recognizes that technological feasibility cannot be predicted with certainty for future handsets, the Commission notes that the Hearing Aid Compatibility Act expressly provides for waivers for new telephones or telephones associated with a new technology or service in cases of technological infeasibility. Therefore, absent evidence that meeting hearing aid compatibility standards is not technologically feasible for any class of handsets or service, the Commission anticipates that compliance will be technologically feasible. Commenters arguing that compliance is not technologically feasible should provide specific engineering evidence related to a defined class of handsets.

14. The Commission seeks comment on how its hearing aid compatibility rules should address circumstances where voice capability may be enabled on a handset by a party other than the manufacturer, particularly where adding the new voice capability may affect operating parameters of the handset such as the frequency range, modulation type, maximum output power, or other parameters specified in the Commission's rules. The Commission's rules for equipment authorization hold the grantee to be the responsible party to ensure continued compliance of the handset and require the grantee to inform the Commission if these parameters change. The Commission seeks comment on the proper procedures for a manufacturer to test the hearing aid compatibility of voice functions that are not initially installed into the phone but may be enabled, for example, by the installation of a software program that affects the circumstances under which the transmitter operates. The Commission seeks comment on whether there are other ways to ascertain and regulate the hearing aid compatibility of such functions, for example, at the time the service provider or applications store enables that software. The Commission also seeks comment on the appropriate regulatory treatment if the hearing aid compatibility of these functions cannot be tested; in particular, whether a handset that meets hearing aid compatibility standards for all voice operations built into the phone but can also accommodate software-added voice operations that cannot be tested may be counted as hearing aid-compatible. Commenters should consider handsets that can provide additional voice capabilities to those already available in the off-the-shelf handset via the installation of software, as well as handsets whose only, or initial, voice capability is not incorporated off the shelf but is instead available through commercial sources. In addressing these issues, commenters should consider how voice services may be offered over new technologies such as WiMax and LTE interfaces and who may manage these capabilities.

15. *Marketability.* The Commission previously found that the costs of compliance would not preclude successful marketing for phones covered under the current rules because some phones meeting the standard for acoustic coupling compliance were already being marketed, the modifications needed to achieve inductive coupling capability did not appear unduly costly, and increased demand was anticipated to drive down production costs. Based on the number of hearing aid-compatible models that are already being successfully marketed across multiple air interfaces and frequency bands, the Commission anticipates, in the absence of convincing evidence to the contrary, that other telephones offering similar capabilities and meeting the same or comparable compliance standards could also be successfully marketed. The Commission seeks comment, supported by evidence, on whether this is so, and whether there is any class of handsets for which the cost of achieving compliance would preclude successful marketing. Again, the Commission notes the availability of waivers in the event future new telephones or telephones used with new technologies could not be successfully marketed due to hearing aid compatibility compliance costs.

16. Absent convincing evidence of technological infeasibility or costs that preclude marketability, the Commission intends to apply to all handsets that will be covered under its broadened rule, after an appropriate transition period, the same hearing aid compatibility requirements that apply to currently covered handsets. The Commission seeks comment on whether, for reasons of technological infeasibility or prohibitive costs, these numerical benchmarks or other rule provisions cannot be applied to any class of handsets. Again, the Commission seeks specific evidence as to why particular requirements cannot be met and what alternative requirements would be feasible and appropriate.

17. *Transition Period.* Ever since the Commission adopted the first wireless hearing aid compatibility rules in 2003, the Commission has consistently recognized that it takes time for handsets with new specifications to be designed, produced, and brought to market, and accordingly the Commission has afforded meaningful transition periods before new hearing aid-compatible handset deployment benchmarks and other requirements have become effective. The Commission seeks comment on the appropriate transition period for applying hearing aid compatibility benchmarks and other requirements to lines of handsets that are outside the subset of CMRS that is currently covered by Section 20.19(a). Would a two-year transition be appropriate, consistent with the lead time the Commission afforded to comply with the original requirements for acoustic coupling compatibility? Would a shorter period, such as one year, be reasonable given that manufacturers are already meeting hearing aid compatibility requirements for currently covered classes of handsets, and many of the engineering solutions reached for those handsets may be transferrable to others? Is it likely that many handsets will already meet hearing aid compatibility standards either as already marketed or as currently planned, and therefore all that will be required is testing of existing handsets rather than introduction of new products? On the other hand, are there special design difficulties that may render a longer transition period necessary for some classes of handsets? For example, are there any special characteristics of satellite transmission that may require particular transition rules for MSS? In consideration of the time needed for phones to progress from the production line to service providers' offerings, should the transition period be longer for service providers than for manufacturers, and should it be longer for smaller service providers than for

nationwide carriers? Parties are invited to comment on these and any other transition issues, either for all newly covered handsets or some subset of those handsets.

B. In-Store Testing Requirement for Independent Retailers

18. Section 20.19(c) and (d) of the Commission's rules requires that wireless service providers make their hearing aid-compatible handset models available for consumer testing in each retail store that they own or operate. This testing requirement does not apply to non-service providers, such as individuals, independent retailers, importers, or manufacturers.

19. The Commission seeks targeted comment on whether the in-store testing requirement should be extended to some or all retail outlets other than those owned or operated by service providers. Given the growth of new channels of distribution, extension of the in-store testing requirement would help to ensure that consumers have the information they need to choose a handset that will operate correctly with their hearing aid or cochlear implant. The Commission seeks comment as to whether, if the Commission does extend the in-store testing requirement to some retail stores other than those owned or operated by service providers, the Commission should extend it to all entities that sell handsets to consumers through physical locations or whether some of these retailers should be excluded from the requirement based on their general customer service practices, the types or numbers of handsets that they sell, their size, or other considerations.

20. In addition to allowing consumers to test handsets, the Commission seeks comment on whether it should require independent retailers to allow a customer with hearing loss to return a handset without penalty, either instead of or in addition to an in-store testing requirement. The Commission notes that the Commission previously encouraged wireless service providers to provide a 30 day trial period or otherwise be flexible on their return policies for consumers seeking access to compliant phones. The Commission reiterates that a flexible return policy could help consumers with hearing loss by providing them with additional time and opportunity to ensure that their handset is compatible with their hearing aid.

21. The Commission also seeks comment on the Commission's authority to extend the in-store testing requirement beyond service providers. First, the Commission seeks comment on interpreting Sections 1 and 2 of the Communications Act, coupled with that Act's Section 3 definition of "radio communications," to cover retail operations that have become enmeshed in the provision of wireless service. The Commission seeks comment on whether a retailer engaged in the sale of wireless handsets is subject to the Commission's general jurisdictional grant because it is engaged in providing "services," including the sale of "instrumentalities, facilities, [and] apparatus * * * incidental to * * * transmission, within the meaning of Section 3."

22. Further, Section 302a of the Act authorizes the Commission to "make reasonable regulations * * * governing the interference potential of handsets which in their operation are capable of emitting radio frequency energy * * * in sufficient degree to cause harmful interference to radio communications * * *" Section 302a further provides that "[n]o person shall * * * sell, offer for sale, * * *, or use devices, which fail to comply with regulations promulgated pursuant to this section." The Commission seeks comment on whether expanding in-store testing requirements to help consumers operate equipment in a manner that does not cause interference to their hearing aids would fall within its jurisdiction under these provisions. In addition, the language of the Hearing Aid Compatibility Act itself is expansive, and it clearly envisions that the Commission should exercise its mandate broadly by "establish[ing] such regulations as are necessary" to ensure access to telephone service by persons with hearing loss. The Commission seeks comment on whether this language provides a basis for exercising its jurisdiction over additional parties so that the Commission may continue to fulfill the mandate of the Hearing Aid Compatibility Act.

C. GSM Operations at 1900 MHz

23. In the accompanying Second Report and Order, the Commission amends its rules so that a manufacturer or service provider that offers one or two handset models over the GSM air interface, which would not have to offer any hearing aid-compatible GSM models but for its size, may meet its hearing aid compatibility deployment obligation by offering one handset that allows consumers to reduce the maximum transmit power only for operations over the GSM air interface in the 1900 MHz band by up to 2.5 decibels and that meets the criteria for an M3 rating for RF interference reduction after such power reduction. The Commission here seeks comment on whether it should treat such handsets as hearing aid-compatible for all purposes.

24. Section 20.19(b) of the Commission's rules provides that a newly certified handset is hearing aid-compatible if it meets the standard set forth in the 2007 revision of ANSI Standard C63.19, and that standard states that the handset must be tested using its maximum rated RF output power. The requirement to test for hearing aid compatibility at full power serves the important goal of ensuring that people with hearing loss have equal access to all of the service quality and performance that a given wireless phone provides. At the same time, meeting the RF interference reduction standard for phones operating over the GSM air interface in the 1900 MHz band poses significant technical challenges, particularly for phones with certain desirable form factors. Moreover, as a legacy 2G network, GSM is in the process of being supplanted by newer and more powerful technologies. Under these circumstances, the Commission seeks comment on whether it is in the public interest to relax the requirement to test handsets for hearing aid compatibility at full power in order to facilitate the near-term availability of desirable handsets to consumers. The Commission welcomes data on the effects that a 2.5 dB reduction in maximum power output will have on coverage, as well as any other effects on consumers with or without hearing loss. In addition, the Commission asks commenters to address how the proposed revision of ANSI Standard C63.19, which would make it approximately 2.2 dB easier for a GSM phone to achieve an M3 rating, should affect the Commission's analysis. Does the expected revision, by making it likely that many handsets will no longer need to reduce their power to meet the M3 criteria, ameliorate any negative effects of a rule change by rendering it less likely that companies will use that rule change beyond the near term? Or does the imminent prospect of a standards change that may largely eliminate the apparent problem counsel against further adjustments to the Commission's rules to address that problem?

25. The Commission proposes to find that if the Commission were to extend the ability to meet hearing aid compatibility standards by allowing the user to reduce the maximum power for GSM operations in the 1900 MHz band, the Commission would do so subject to the same conditions that it has imposed in the context of the *de minimis* rule. Thus, the handset would have to

operate at full power when calling 911, and the manufacturer or service provider would have to disclose that activation of a special mode is required to meet the hearing aid compatibility standard and must explain how to activate the special mode and the possibility of a loss of coverage in the device manual or product insert. The Commission seeks comment on these and any other possible conditions.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[2] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this Further Notice of Proposed Rule Making (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in Section III.C.2. of this summary. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[3]

27. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band,[4] the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this Further Notice, including spectrum in the 746–806 MHz Band.

1. Need for, and Objectives of, the Proposed Rules

28. The FNPRM proposes to find that the scope of the Commission's hearing aid compatibility rules should be extended so as to cover all customer equipment used to provide wireless communications among members of the public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear, so long as meeting hearing aid compatibility standards is technologically feasible and would not raise costs to an extent that would preclude successful marketing of the equipment. The FNPRM seeks comment on: (1) Whether considerations of technological feasibility or marketability prevent application of the hearing aid compatibility requirements, or require modification of those requirements, as to any class of handsets; and (2) what transition period is appropriate for applying the requirements to newly covered handsets. This proposed rule change would ensure that people with hearing loss will have access to new and advanced handsets regardless of the frequency over which they operate or the voice technology mode deployed, while maintaining consistency with the technological feasibility and marketability criteria set forth in the Hearing Aid Compatibility Act.[5]

29. The FNPRM also seeks comment on whether the current requirement to make hearing aid-compatible handsets available in-store for consumer testing should be extended to some or all retail outlets other than those owned or operated by service providers. The Commission seeks comment on how to define the class of independent retailers that would be required to make hearing aid-compatible handsets available for in-store testing. This rule change would ensure that consumers have the information they need to choose a handset that will operate correctly with their hearing aid or cochlear implant.

30. Additionally, the FNPRM seeks comment on whether the Commission should treat handsets that allow consumers to reduce the maximum transmit power only for operations over the GSM air interface in the 1900 MHz band by up to 2.5 decibels, except for calls to 911, and that meet the criteria for an M3 rating after such power reduction, as hearing aid-compatible for all purposes. This rule change would help ensure the near-term availability of desirable handsets over the legacy GSM air interface while still affording substantial access to people with hearing loss. The Commission also proposes, for all such handsets, that the manufacturer or service provider would have to disclose that activation of a special mode is required to meet the hearing aid compatibility standard, how to activate the special mode, and the possibility of a loss of coverage if the special mode is activated. This rule change would ensure that consumers have the information they need to choose and operate a handset that will best function with their hearing aid or cochlear implant.

2. Legal Basis

31. The potential actions about which comment is sought in this FNPRM would be authorized pursuant to the authority contained in Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Would Apply

32. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by proposed rules.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[9] To assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this FNPRM.

33. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[10]

34. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[3] *See* 5 U.S.C. 603(a).

[4] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. 106–113, 113 Stat. 2502, App. E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Section 213(a)(4)(A)–(B).

[5] 47 U.S.C. 610.

[6] 5 U.S.C. 604(a)(3).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[9] 15 U.S.C. 632.

[10] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs* (last visited Jan. 2009).

category "Wireless Telecommunications Carriers (except satellite)." [11] Under that SBA category, a business is small if it has 1,500 or fewer employees.[12] The census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)". However, since currently available data was gathered when "Cellular and Other Wireless Telecommunications" was the relevant category, earlier Census Bureau data collected under the category of "Cellular and Other Wireless Telecommunications" will be used here. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[13] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[14] Thus, under this category and size standard, the majority of firms can be considered small.

35. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[15] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[16] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[17] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[18] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[19]

36. On January 26, 2001, the Commission completed the auction of 422 C and F Block PCS licenses in Auction 35.[20] Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[21] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[22] Of the 14 winning bidders, six were designated entities.[23] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F Block licenses in Auction 78.[24]

37. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[25] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[26] The SBA has approved these small business size standards for the 900 MHz Service.[27] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[28] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 licenses. One bidder claiming small business status won five licenses.[29]

38. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

39. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended

[11] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517210.

[12] *Id.*

[13] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

[14] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[15] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850–7852 paras. 57–60 (1996); *see also* 47 CFR 24.720(b).

[16] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 para. 60.

[17] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated December 2, 1998.

[18] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[19] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[20] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

[21] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice*, 20 FCC Rcd 3703 (2005).

[22] *See* "Auction of Broadband PCS Spectrum License Closes; Winning Bidders Announced for Auction No. 71," *Public Notice*, 22 FCC Rcd 9247 (2007).

[23] *Id.*

[24] *See* Auction of AWS–1 and Broadband PCS Licenses Rescheduled For August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice*, 23 FCC Rcd 7496 (2008) (*AWS–1 and Broadband PCS Procedures Public Notice*).

[25] 47 CFR 90.814(b)(1).

[26] *Id.*

[27] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated August 10, 1999.

[28] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[29] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR services pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

40. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[30] This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had a combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[31] Four winning bidders that identified themselves as very small businesses won 17 licenses.[32] Three of the winning bidders that identified themselves as small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

41. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[33] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[34] In the present context, the Commission will use the SBA small business size standard applicable to Wireless Telecommunication Carriers (except satellite), *i.e.*, an entity employing no more than 1,500 persons.[35] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

42. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million or less for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million or less for each of the three preceding years.[36] The SBA has approved these definitions.[37] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997, and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

43. *700 MHz Guard Bands Licenses.* In the *700 MHz Guard Bands Order*, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[38] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[39] Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[40] SBA approval of these definitions is not required.[41] An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000.[42] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[43] Subsequently, in the *700 MHz Second Report and Order,* the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).[44] A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.[45] Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

44. *700 MHz Band Commercial Licenses.* There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698–757, 758–763, 776–787, and 788–793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) "Small business," which is defined as an entity with attributed average annual

[30] *See* AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[31] *Id.* at 7521–22.

[32] *See* "Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *Public Notice,* 23 FCC Rcd 12749 (2008).

[33] The service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

[34] BETRS is defined in §§ 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[35] 13 CFR 121.201, NAICS code 517210.

[36] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order,* 12 FCC Rcd 10785, 10879 para. 194 (1997).

[37] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated December 2, 1998.

[38] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299 (2000).

[39] *Id.* at 5343 para. 108.

[40] *Id.*

[41] *Id.* at 5343 para. 108 n.246 (for the 746–764 MHz and 776–704 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

[42] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 18026 (WTB 2000).

[43] *See* "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[44] *See* In the Matter of Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket 06–150, *Second Report and Order*, 22 FCC Rcd 15289, 15339–15344 paras. 118–134 (2007) (*700 MHz Second Report and Order*).

[45] *Id.*

gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years; and (2) "very small business," which is defined as an entity with attributed average annual gross revenues that do not exceed $15 million for the preceding three years.[46] In Block C of the Lower 700 MHz Band (710–716 MHz and 740–746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[47] The SBA has approved these small size standards.[48]

45. An auction of 740 licenses for Blocks C (710–716 MHz and 740–746 MHz) and D (716–722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.[49] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: Five EAG licenses and 251 CMA licenses.[50] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[51]

46. The remaining 62 megahertz of commercial spectrum was auctioned on January 24 through March 18, 2008. As explained above, bidding credits for all of these licenses were available to "small businesses" and "very small businesses." Auction 73 concluded with 1090 provisionally winning bids covering 1091 licenses and totaling $19,592,420,000. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. The provisionally winning bid for the D Block license, however, did not meet the applicable reserve price and thus did not become a winning bid. Approximately 55 small businesses had winning bids.[52] Currently, the 10 remaining megahertz associated with the D block have not yet been assigned.[53]

47. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[54] There is presently one licensee in this service. The Commission does not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[55] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[56]

48. *Broadband Radio Service and Educational Broadband Service.* The Broadband Radio Service ("BRS"), formerly known as the Multipoint Distribution Service ("MDS"),[57] and the Educational Broadband Service ("EBS"), formerly known as the Instructional Television Fixed Service ("ITFS"),[58] use 2 GHz band frequencies to transmit video programming and provide broadband services to residential subscribers.[59] These services, collectively referred to as "wireless cable," were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.[60] The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. The SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS and ITFS.[61] Note that the census category of "Cable and Other Program Distribution" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite). This category provides that a small business is a wireless company employing no more than 1,500 persons.[62] However, since currently available data was gathered when "Cable and Other Program Distribution" was the relevant category, earlier Census Bureau data collected under the category of "Cable and Other Program Distribution" will be used here. Other standards also apply, as described.

49. The Commission has defined small MDS (now BRS) entities in the context of Commission license auctions. In the 1996 MDS auction,[63] the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[64] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[65] In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are hundreds of MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction

[46] *See* Auction of 700 MHz Band Licenses Scheduled for Jan. 24, 2008, AU Docket No. 07–157, *Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76,* DA 07–4171 at para. 70 (WTB rel. Oct. 5, 2007); Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1087–88 (2002).

[47] *Id.* at 1088.

[48] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated August 10, 1999.

[49] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[50] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[51] *Id.*

[52] *See* "Auction of 700 MHz Band Licenses Closes," *Public Notice,* 23 FCC Rcd 4572 (WTB 2008).

[53] *See* fcc.gov website at *http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73.*

[54] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[55] 13 CFR 121.201, NAICS code 517210.

[56] *Id.*

[57] *See* 47 CFR part 21, subpart K; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Part 1 of the Commission's Rules—Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004).

[58] *See* 47 CFR part 74, subpart I; *MDS/ITFS Order,* 19 FCC Rcd 14165 (2004).

[59] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report,* 20 FCC Rcd 2507, 2565 para. 131 (2006).

[60] *Id.*

[61] 13 CFR 121.201, NAICS code 515210.

[62] 13 CFR 121.201, NAICS code 517210.

[63] MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

[64] 47 CFR 21.961(b)(1).

[65] *See* Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Docket No. 94–131, *Report and Order,* 10 FCC Rcd 9589 (1995).

and that fall under the former SBA small business size standard for Cable and Other Program Distribution.[66] Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 of these small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

50. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).[67] The Commission estimates that there are currently 2,452 EBS licenses, held by 1,524 EBS licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,424 EBS licensees are small entities.

51. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands.[68] Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a "small business," and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a "very small business."[69] SBA has approved these small business size standards for the aforementioned bands.[70] Correspondingly, the Commission adopted a bidding credit of 15 percent for "small businesses" and a bidding credit of 25 percent for "very small businesses."[71] This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission's rules.[72] The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services.[73] The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities.[74] The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.[75] An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

52. *Mobile Satellite Service Carriers.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[76] The category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[77] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[78] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[79] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

53. *Internet Service Providers.* In the Notice, the Commission seeks comment on whether to extend hearing aid compatibility requirements to entities offering access to Voice over Internet Protocol (VoIP) applications over Wi-Fi[80] and other wireless technologies that may fall outside the definition of CMRS and/or the criteria in Section 20.19(a), such as those operating on networks that do not employ "an in-network switching facility that enables

[66] Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "Cable and Other Program Distribution" (annual receipts of $13.5 million or less). *See* 13 CFR 121.201, NAICS code 515210.

[67] In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). The Commission does not collect annual revenue data on EBS licensees.

[68] *See* Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002) (*Government Transfer Bands Service Rules Report and Order*).

[69] *See* Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, WT Docket No. 02–8, *Notice of Proposed Rulemaking,* 17 FCC Rcd 2500, 2550–51 paras. 144–146 (2002). To be consistent with the size standard of "very small business" proposed for the 1427–1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding $3 million, the *Service Rules Notice* proposed to use the terms "entrepreneur" and "small business" to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively. Because the Commission is not adopting small business size standards for the 1427–1432 MHz band, it instead uses the terms "small business" and "very small business" to define entities with average gross revenues for the three preceding years not exceeding $40 million and $15 million, respectively.

[70] *See* Letter from Hector V. Barreto, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Jan. 18, 2002.

[71] Such bidding credits are codified for the unpaired 1390–1392 MHz, paired 1392–1395 MHz, and the paired 1432–1435 MHz bands in 47 CFR 27.807. Such bidding credits are codified for the unpaired 1670–1675 MHz band in 47 CFR 27.906.

[72] In the *Part 1 Third Report and Order,* the Commission adopted a standard schedule of bidding credits, the levels of which were developed based on its auction experience. *Part 1 Third Report and Order,* 13 FCC Rcd at 403–04 para. 47; *see also* 47 CFR 1.2110(f)(2).

[73] *See Service Rules Notice,* 17 FCC Rcd at 2550–51 para. 145.

[74] *See, e.g.*, Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, WT Docket No. 96–18, PR Docket No. 93–253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order,* 14 FCC Rcd 10030, 10091 para. 112 (1999).

[75] 47 U.S.C. 309(j)(3)(B), (4)(C)–(D). The Commission will also not adopt special preferences for entities owned by minorities or women, and rural telephone companies. The Commission did not receive any comments on this issue, and it does not have an adequate record to support such special provisions under the current standards of judicial review. *See Adarand Constructors* v. *Peña,* 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for government mandated race-conscious measures); *United States* v. *Virginia,* 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification).

[76] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[77] 13 CFR 121.201, NAICS code 517410.

[78] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[79] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[80] Wi-Fi (Wireless Fidelity) is a wireless technology that is based on the Institute of Electrical and Electronics Engineers 802.11 standards.

the provider to reuse frequencies and accomplish seamless hand-offs." Such applications may be provided, for example, by Internet Service Providers (ISPs). ISPs are Internet Publishing and Broadcasting and Web Search Portals [81] that provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity. To gauge small business prevalence for these Internet Publishing and Broadcasting and Web Search Portals, the Commission must, however, use current census data that are based on the previous category of Internet Service Providers and its associated size standard. That standard was: All such firms having $23.5 million or less in annual receipts. Accordingly, to use data available to us under the old standard and Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.[82] Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

54. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." [83] VoIP services over wireless technologies could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts.[84] According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year.[85] Of these, 172 had annual receipts of under $5 million, and an additional nine firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

55. *Part 15 Handset Manufacturers.* Manufacturers of unlicensed wireless handsets may also become subject to requirements in this proceeding for their handsets used to provide VoIP applications. The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. Therefore, the Commission will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." [86] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.[87] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[88] Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999.[89] Thus, under this size standard, the majority of firms can be considered small.

56. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees.[90] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

57. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." [91] The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having $9 million or less in annual receipts.[92] According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire

[81] U.S. Census Bureau, "Internet Publishing and Broadcasting and Web Search Portals," NAICS code 519130.

[82] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

[83] U.S. Census Bureau, "2002 NAICS Definitions: 519190 All Other Information Services" (Feb. 2004) *http://www.census.gov.* The Commission notes that the Commission has not reached conclusions as to whether, or under what conditions, VoIP services constitute communications or information services under the Communications Act, and our identification of this group of small entities as providers of "information services" under the Census Bureau definition is not intended to indicate any conclusions in this regard.

[84] 13 CFR 121.201, NAICS code 519190.

[85] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 514199 (issued Oct. 2000). This category was created for the 2002 Economic Census by taking a portion of the superseded 1997 category, "All Other Information Services," NAICS code 514199. The data cited in the text above are derived from the superseded category.

[86] U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.*

[87] 13 CFR 121.201, NAICS code 334220.

[88] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (rel. May 26, 2005); *http://factfinder.census.gov.* The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks out data for firms or companies only to give the total number of such entities for 2002, which was 929.

[89] *Id.* An additional 18 establishments had employment of 1,000 or more.

[90] 13 CFR 121.201, NAICS code 334220.

[91] U.S. Census Bureau, 2002 NAICS Definitions, "443112 Radio, Television, and Other Electronics Stores"; *http://www.census.gov/epcd/naics02/def/NDEF443.HTM.*

[92] 13 CFR 121.201, NAICS code 443112.

year.[93] Of this total, 10,080 firms had annual sales of under $5 million, and 177 firms had sales of $5 million or more but less than $10 million.[94] Thus, the majority of firms in this category can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

58. The Commission proposes to extend broadly to providers of wireless communications among members of the public or a substantial portion of the public using equipment that contains a built-in speaker and is typically held to the ear, and to the manufacturers of such equipment, the same hearing aid compatibility rules that currently apply to a defined category of commercial mobile radio service (CMRS). These regulations include: (1) Requirements to deploy a certain number or percentage of handset models that meet hearing aid compatibility standards, (2) "refresh" requirements on manufacturers to meet their hearing aid-compatible handset deployment benchmarks in part using new models, (3) a requirement that service providers offer hearing aid-compatible handsets with varying levels of functionality, (4) a requirement that service providers make their hearing aid-compatible models available to consumers for testing at their owned or operated stores, (5) point of sale disclosure requirements, (6) requirements to make consumer information available on the manufacturer's or service provider's Web site, and (7) annual reporting requirements. There is a *de minimis* exception from all of the requirements except reporting for small entities, and for all entities during their first two years of offering handsets, that offer two or fewer handset models over an air interface. The Commission seeks comment on whether there are any classes of handsets for which either it is technically infeasible to meet the hearing aid compatibility requirements or satisfying those requirements would increase costs to the point where the handsets could not be successfully marketed. The Commission also seeks comment on the appropriate transition period for applying hearing aid compatibility requirements to telephones that are outside the currently covered subset of CMRS.

59. The Commission's rules require that wireless service providers make their hearing aid-compatible handset models available for consumer testing in each retail store that they own or operate. The Commission seeks comment on whether it should extend the in-store testing requirement to some or all entities that sell handsets to consumers through physical locations. In addition, the Commission seeks comment about whether it should adopt a rule providing that a return policy allowing a customer with hearing loss to return a handset without penalty would qualify as an alternative means of satisfying the in-store testing requirement.

60. Under the Commission's rules, handsets must be tested for hearing aid compatibility at their maximum output power. The Commission seeks comment on whether it should treat as hearing aid-compatible for all purposes handsets that allow consumers to reduce the maximum transmit power only for operations over the GSM air interface in the 1900 MHz band by up to 2.5 decibels and that meet the criteria for an M3 rating after such power reduction. The Commission proposes that if it were to extend the ability to meet hearing aid compatibility standards in this manner, it should require the handset to operate at full power when calling 911, the manufacturer or service provider would have to disclose that activation of a special mode is required to meet the hearing aid compatibility standard, and the device manual or product insert would have to explain how to activate the special mode and the possibility of a loss of coverage. The Commission seeks comment on these and any other possible conditions on this rule change.

5. Steps Proposed To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

61. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities."[95]

62. The Commission seeks comment generally on the effect the rule changes considered in this FNPRM would have on small entities, on whether alternative rules should be adopted for small entities in particular, and on what effect such alternative rules would have on those entities. The Commission invites comment on ways in which it can achieve its goals while minimizing the burden on small wireless service providers, equipment manufacturers, and other entities.

63. More specifically, the Commission seeks comment on whether there are any classes of handsets that provide wireless communications among members of the public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear for which either it is technologically infeasible to meet hearing aid compatibility requirements or satisfying those requirements would increase costs to the point where the handsets could not be successfully marketed. The Commission seeks comment on whether, for reasons of technological infeasibility or prohibitive costs, the specific numerical benchmarks set forth in the Commission's rules or other rule provisions cannot be applied to any class of handsets. The Commission seeks specific evidence as to why particular requirements cannot be met and what alternative requirements would be feasible and appropriate. The Commission also asks commenters to suggest alternatives that may further reduce possible burdens on small entities regarding meeting the hearing aid compatibility requirements.

64. The Commission recognizes that it takes time for handsets with new specifications to be designed, produced, and brought to market. The Commission therefore seeks comment on the appropriate transition period for applying hearing aid compatibility requirements to telephones that are outside the subset of CMRS that is currently covered by Section 20.19(a). In recognition that smaller service providers may encounter delays in obtaining new model handsets from manufacturers and vendors, the Commission specifically asks whether smaller service providers should have a longer transition period than Tier I carriers. The Commission also asks commenters to suggest other alternative transition periods that could further lessen the burden on small businesses.

[93] U.S. Census Bureau, 2002 Economic Census, Industry Series: Retail Trade, Table 4, Sales Size of Firms for the United States: 2002, NAICS code 443112 (issued Nov. 2005).

[94] *Id.* An additional 123 firms had annual sales of $10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts.

[95] 5 U.S.C. 603(c)(1)–(c)(4).

65. The Commission also seeks comment as to whether the Commission should extend the in-store testing requirement to some or all entities other than those owned or operated by service providers that sell handsets to consumers through physical locations. The Commission further seeks comment, if it decides to extend this requirement to some but not all retail outlets, on how the scope of the requirement should be defined. Among other things, the Commission asks whether the size of an entity should be a factor in this definition. The Commission's goal is to arrive at a definition that is clear and easy to apply, and at the same time closely identifies those retailers for which the benefits of the rule outweigh the burdens while reducing the burden on small entities. The Commission also seeks comment on alternatives to extending the in-store testing requirement, including whether a return policy allowing a customer with hearing loss to return a handset without penalty should qualify as an alternative means of satisfying the requirement. The Commission asks commenters to suggest alternatives that may further reduce the impact on small entities.

66. Additionally, the FNPRM seeks comment on whether the Commission should treat handsets that allow consumers to reduce the maximum transmit power only for operations over the GSM air interface in the 1900 MHz band by up to 2.5 decibels and that meet criteria for an M3 rating after such power reduction as hearing aid-compatible for all purposes. This rule change would ease the burden on small entities by making it easier to satisfy hearing aid compatibility requirements for this class of handsets.

67. Finally, if the Commission were to extend the ability to meet hearing aid compatibility standards by allowing the user to reduce the maximum power for GSM operations in the 1900 MHz band, it proposes to do so subject to the same conditions that it has imposed in the context of the *de minimis* rule. Thus, the handset would have to operate at full power when calling 911, the manufacturer or service provider would have to disclose that activation of a special mode is required to meet the hearing aid compatibility standard, and the device manual or product insert would have to explain how to activate the special mode and the possibility of a loss of coverage. This rule change would ensure that consumers have the information they need to choose and operate a handset that will best function with their hearing aid or cochlear implant. The Commission seeks to receive alternative proposals that would achieve this goal while further reducing the burdens on small business.

68. For each of the proposals in the FNPRM, the Commission seeks discussion, and where relevant, alternative proposals, on the effect that each prospective new requirement, or alternative rules, might have on small entities. For each proposed rule or alternative, the Commission seeks discussion about the burden that the prospective regulation would impose on small entities and how the Commission could impose such regulations while minimizing the burdens on small entities. For each proposed rule, the Commission asks whether there are any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing the burdens on small entities. For the duration of this docketed proceeding, the Commission will continue to examine alternatives with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

69. None.

B. Initial Paperwork Reduction Act Analysis

70. The FNPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Other Procedural Matters

1. Ex Parte Presentations

71. The rulemaking shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

2. Comment Filing Procedures

72. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 25, 2010, and reply comments on or before November 22, 2010. All filings related to this Further Notice of Proposed Rulemaking should refer to WT Docket No. 07–250. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for WT Docket No. 07–250. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300

East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

73. Parties should send a copy of their filings to John Borkowski, Federal Communications Commission, Room 6404, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *John.Borkowski@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

74. Documents in WT Docket No. 07–250 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

3. Accessible Formats

75. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

IV. Ordering Clauses

76. Accordingly, *It is ordered* that, pursuant to the authority of sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, this Further Notice of Proposed Rulemaking is hereby adopted.

77. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before October 25, 2010, and reply comments on or before November 22, 2010.

78. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Incorporation by reference, and Radio.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, 332, and 710 unless otherwise noted.

§ 20.19 [Amended]

2. Amend § 20.19 as follows:

a. Revise paragraph (a)(1);

b. Redesignate paragraph (a)(3) as (a)(4);

c. Add new paragraph (a)(3);

d. Revise newly designated paragraph (a)(4)(iv);

e. Add paragraph (a)(4)(v);

f. Revise paragraph (b) introductory text;

g. Add paragraph (b)(1)(iii);

h. Revise paragraph (c)(4);

i. Revise paragraph (d)(4);

j. Add paragraph (f)(3); and

k. Add paragraph (l).

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Scope of section; definitions.* (1) The hearing aid compatibility requirements of this section apply to providers of wireless service that can be used for voice communications among members of the public or a substantial portion of the public, where such service is provided over frequencies in the 800–950 MHz or 1.6–2.5 GHz bands using any air interface for which technical standards are stated in the standard document "American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids," American National Standards Institute (ANSI) C63.19–2007 (June 8, 2007).

* * * * *

(3) The requirements of paragraph (l) of this section apply to all entities that sell wireless handsets that are used in delivery of the services specified in paragraph (a)(1) of this section to consumers through a physical location, whether or not those entities are included in paragraph (a)(1) or (a)(2) of this section.

(4) * * *

(iv) Service provider refers to a provider of wireless service to which the requirements of this section apply.

(v) Tier I carrier refers to a service provider that offers commercial mobile radio service nationwide.

(b) Hearing aid compatibility; technical standards. A wireless handset used only over the frequency bands and air interfaces referenced in paragraph (a)(1) of this section is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard(s) set forth in paragraphs (b)(1) and (b)(2) of this section for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of this chapter. A wireless handset that incorporates an air interface or operates over a frequency band for which no technical standards are stated in ANSI C63.19–2007 (June 8, 2007) is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

(1) * * *

(iii) GSM operations at 1900 MHz. Notwithstanding paragraphs (b)(1)(i) and (ii) of this section, a wireless handset that operates over the GSM air interface in the 1900 MHz frequency band is hearing aid-compatible for radio frequency interference if;

(A) The handset enables the user optionally to reduce the maximum power at which the handset will operate by no more than 2.5 decibels, except for emergency calls to 911, only for GSM operations in the 1900 MHz band;

(B) The handset would meet, at a minimum, the M3 rating associated with the technical standard set forth in ANSI C63.19–2007 (June 8, 2007) if the power as so reduced were the maximum power at which the handset could operate; and

(C) Customers are informed of the power reduction mode as provided in paragraph (f)(3) of this section.

* * * * *

(c) * * *

(4) All service providers. Each Tier I carrier and other service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (*e.g.*, operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(vii) of this section.

(d) * * *

(4) All service providers. Each Tier I carrier and other service provider must offer its customers a range of hearing aid-compatible models with differing

levels of functionality (*e.g.*, operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(vii) of this section.

* * * * *

(f) * * *

(3) Disclosure requirement relating to handsets that allow the user to reduce the maximum power for GSM operation in the 1900 MHz band. Handsets that meet the technical standard for radio frequency interference pursuant to paragraph (b)(1)(iii) of this section shall be labeled as meeting an M3 rating.

* * * * *

(l) *In-store testing.* Any entity that sells wireless handsets to consumers through a physical location must make available for consumers to test, in each retail store that it owns or operates, all of its handset models that comply with paragraph (b)(1) or (b)(2) of this section.

[FR Doc. 2010–22254 Filed 9–7–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAR Case 2009–029; Docket 2010–0096, Sequence 1]

RIN 9000–AL72

Federal Acquisition Regulation; Clarification of Standard Form 26—Award/Contract

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise (a) the header for blocks 17 and 18 and (b) block 18 of the Standard Form (SF) 26 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed-bid contract.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before November 8, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR Case 2009–029 by any of the following methods:

• *Regulations.gov:http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–029" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–029". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–029" on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street, NW., Room 4041, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2009–029, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2009–029.

SUPPLEMENTARY INFORMATION:

A. Background

This case was initiated after an agency identified an inconsistency in the use of the SF 26 by contracting officers. Although block 18 of the form is intended for use only with sealed-bid procurements, contracting officers have used block 18 with negotiated procurements, which has had unintended negative consequences in certain contract disputes.

FAR 53.214(a) prescribes the SF 26 for use in contracting for supplies and services by sealed bidding (except for construction and architect-engineer services). The SF 26 is used to award sealed-bid contracts after obtaining bids using a SF 33, Solicitation, Offer, and Award. FAR 14.408–1(d)(1) specifies that, if an offer made using a SF 33 leads to further changes, the resulting contract must be prepared as a bilateral document using the SF 26.

This case is based on instances where contracting officers have mistakenly checked block 18 when awarding negotiated, not sealed bid, contracts. Such use has created the potential for disputes in situations where the Government's intent was not to accept the terms of the offer in its entirety, as the current wording of block 18 may imply.

The Councils believe that revising the header for blocks 17 and 18 and block 18 of the form will eliminate the issue. In addition to the recent enhancements to the instructions for use of the form, at FAR 53.214 and 53.215–1, the Councils propose to add "sealed bid" to the title of block 18, change "offer" to "bid" each time it occurs in block 18, and add a new sentence at the end of the block stating that block 18 should only be checked when awarding a sealed-bid contract.

These changes will not prohibit the use of the SF 26 for awarding negotiated procurements; it will only prohibit the use of block 18 of the SF 26 when awarding negotiated procurements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses, but rather clarifies an area open to confusion. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR part 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2009–029), in all correspondence. The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009–029), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management

and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: August 27, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 53 as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

§ 53.214 [Amended]

2. Amend section 53.214 in paragraph (a) by removing "SF 26 (APR 2008)" and adding "SF 26 (Date)" in its place.

§ 53.215–1 [Amended]

3. Amend section 53.215–1 in paragraph (a) by removing "SF 26 (APR 2008)" and adding "SF 26 (Date)" in its place.

[FR Doc. 2010–22346 Filed 9–7–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R3-ES-2009-0009]
[MO 92210-0-0008-B2]

RIN 1018-AV94

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Ozark Hellbender Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered status under the Endangered Species Act of 1973, as amended (Act), for the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) throughout its entire range. The species is found in southern Missouri and northern Arkansas. If we finalize this proposed rule, it would extend the Act's protection to the Ozark hellbender. However, we find that designation of critical habitat is not prudent for the Ozark hellbender at this time, because the increased threat to the species from illegal collection and trade outweighs the benefits of designating critical habitat. We seek data and comments from the public on this proposed listing rule and prudency determination.

DATES: We will accept comments received on or before November 8, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by October 25, 2010.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS-R3-ES-2009-0009.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS-R3-ES-2009-0009; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Charles Scott, Field Supervisor, at the U.S. Fish and Wildlife Service, Columbia Missouri Ecological Services Field Office, 101 Park De Ville Dr., Suite A, Columbia, MO 65203 (telephone 573-234-2132). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to list the Ozark hellbender as endangered. We particularly seek comments concerning:

(1) Population survey results for the Ozark hellbender, as well as any studies that may show distribution, status, population size, or population trends, including indications of recruitment.

(2) Pertinent aspects of life history, ecology, and habitat use of the Ozark hellbender.

(3) Current and foreseeable threats faced by the Ozark hellbender in relation to the five factors (as defined in section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*)):

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

(4) Our determination of "not prudent" for critical habitat.

(5) Whether there is a need for us to consider developing a "similarity of appearance" listing for the eastern hellbender. Section 4(e) of the Act (similarity of appearance cases) allows the Secretary to treat any species as an endangered or threatened species under the Act if he finds that: (A) It (in this case, the eastern hellbender) closely resembles a listed species (in this case, the Ozark hellbender) and enforcement personnel would have substantial difficulty differentiating between the listed and unlisted species; (B) the effect of this difficulty is an additional threat to the listed species: and (C) such treatment of the unlisted species would substantially facilitate enforcement of the Act for Ozark hellbender.

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

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours at the Columbia Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

Species Description

The Ozark hellbender is a large, strictly aquatic salamander endemic to streams of the Ozark plateau in southern Missouri and northern Arkansas. Its

dorso-ventrally flattened body form enables movements in the fast-flowing streams it inhabits (Nickerson and Mays 1973a, p. 1). Ozark hellbenders have a large, keeled tail and tiny eyes. An adult may attain a total length of 11.4 to 22.4 inches (in) (29 to 57 centimeters (cm)) (Dundee and Dundee 1965, pp. 369-370; Johnson 2000, p. 41). Numerous fleshy folds along the sides of the body provide surface area for respiration (Nickerson and Mays 1973a, pp. 26-28) and obscure their poorly developed costal grooves (grooves in the inner border of the ribs; Dundee 1971, p. 101.1). Ozark hellbenders are distinguishable from eastern hellbenders (*Cryptobranchus alleganiensis alleganiensis)* by their smaller body size, dorsal blotches, increased skin mottling, heavily pigmented lower lip, smooth surfaced lateral line system, and reduced spiracular openings (openings where water is expelled out of the body) (Grobman 1943, p. 6; Dundee 1971, p. 101.3; Peterson *et al.* 1983, pp. 227-231; LaClaire 1993, pp. 1-2). Despite these distinguishing characteristics, the two subspecies are not easily or readily distinguishable absent the presence of both subspecies or when encountered outside of their subspecies' range.

Taxonomy

The Ozark hellbender was originally described as *Cryptobranchus bishopi* by Grobman (1943, pp. 6-9) from a specimen collected from the Current River in Carter County, Missouri. Due to the small amount of genetic variation in the genus *Cryptobranchus* (Merkle *et al.* 1977, pp. 550-552; Shaffer and Breden 1989, pp. 1017-1022), Dundee and Dundee (1965, p. 370) referred to the Ozark hellbender as a subspecies of the eastern hellbender, *C. alleganiensis.* This designation persisted until Collins (1991, pp. 42-43) revived *C. bishopi*, due to the lack of intergradation between the eastern and Ozark hellbenders because of the allopatry (occurring in separate, nonoverlapping geographic areas) of the populations (Dundee 1971, p. 101.1). Although Ozark hellbenders have been shown to be phenotypically and genetically distinct from eastern hellbenders (Grobman 1943, pp. 6-9; Dundee and Dundee 1965, p. 370; Dundee 1971, p. 101.1; Routman 1993, pp. 410-415; Kucuktas *et al.* 2001, p. 127), we will continue to use *C. a. bishopi*, which is the name currently recognized by the Committee on Standard English and Scientific Names (Crother *et al.* 2008, p. 15). Although discussion continues over the taxonomic status of the Ozark hellbender, the designation of the Ozark hellbender as a species or subspecies does not affect its qualification for listing under the Act (16 U.S.C. 1531 *et seq.*). Careful review of the Ozark hellbender's taxonomic information confirms it is a valid subspecies.

Habitat and Life History

Eastern and Ozark hellbenders are similar in habitat selection, movement, and reproductive biology (Nickerson and Mays 1973a, pp. 44-55). Published works on the eastern hellbender provide insights into Ozark hellbender ecology. Adult Ozark hellbenders are frequently found beneath large rocks in moderate to deep (less than 3 feet (ft) to 9.8 ft (less than 1 meter (m) to 3 m)), rocky, fast-flowing streams in the Ozark plateau (Johnson 2000, p. 42; Fobes and Wilkinson 1995, pp. 5-7). In spring-fed streams, Ozark hellbenders will often concentrate downstream of the spring, where there is little water temperature change throughout the year (Dundee and Dundee 1965, p. 370). Adults are nocturnal, remaining beneath cover during the day and emerging to forage at night, primarily on crayfish. They are diurnal during the breeding season (Nickerson and Mays 1973a, pp. 40-41; Noeske and Nickerson 1979, p. 92 and p. 94). Ozark hellbenders are territorial and will defend occupied cover from other hellbenders (Nickerson and Mays 1973a, pp. 42-43). This species migrates little throughout its life. For example, one tagging study revealed that 70 percent of marked individuals moved less than 100 ft (30 m) from the site of original capture (Nickerson and Mays 1973b, p. 1165). Home ranges average 91.9 square (sq) ft (28 sq m) for females and 265.7 sq ft (81 sq m) for males (Peterson and Wilkinson 1996, p. 126).

Hellbenders are habitat specialists that depend on consistent levels of dissolved oxygen, temperature, and flow (Williams *et al.* 1981, p. 97). The lower dissolved-oxygen levels found in warm or standing water do not provide for the hellbender's respiratory needs. In fact, hellbenders have been observed rocking or swaying in still, warm water (Williams *et al.* 1981, p. 97) to increase their exposure to oxygen. Hutchison and Hill (1976, p. 327) found that the hellbender exhibits a preferred mean water temperature of 11.6 °C (52.9 °F), 17.7 °C (63.9 °F), and 21.7 °C (71.1 °F) for individuals acclimatized to temperatures of 5 °C (41 °F), 15 °C (59 °F), and 25 °C (77 °F), respectively. Hutchison *et al.* (1973, p. 807) found the mean critical thermal maxima (the temperature at which animals lose their organized locomotory ability and are unable to escape from conditions that would promptly lead to their death) of Ozark hellbenders was 32.7 °C (90.9 °F) at 5 °C (41 °F) acclimation, 32.9 °C (91.2 °F) at 15 °C (59 °F), and 36.5 °C (97.7 °F) at 25 °C (77° F).

Typically, Ozark hellbender populations are dominated by older, large adults (Nickerson and Mays 1973a, p. 1; Peterson *et al.* 1983, pp. 227-231; LaClaire 1993, p. 2). Hellbenders are long-lived, capable of living 25 to 30 years in the wild (Peterson *et al.* 1983, p. 228). Hellbenders may live up to 29 years in captivity (Nigrelli 1954, p. 297).

Individuals mature sexually at 5 to 8 years of age (Bishop 1941, pp. 49-50; Dundee and Dundee 1965, p. 370), and males normally mature at a smaller size and younger age than females. Female hellbenders are reported to be sexually mature at a total length of 14.6 to 15.4 in (37 to 39 cm), or approximately 6 to 8 years (Nickerson and Mayes 1973a, p. 54; Peterson *et al.* 1983, p. 229; Taber *et al.* 1975, p. 638). Male hellbenders have been reported to reach sexual maturity at a total length of 11.8 in (30 cm), or approximately 5 years (Taber *et al.* 1975, p. 638).

Breeding generally occurs between mid-September and early October (Johnson 2000, p. 42). Males prepare nests beneath large flat rocks or submerged logs. Ozark hellbenders mate via external fertilization, and males will guard the fertilized eggs from predation by other hellbenders (Nickerson and Mays 1973a, p. 42 and p. 48). Clutch sizes vary from 138 to 450 eggs per nest (Dundee and Dundee 1965, p. 369), and eggs hatch after approximately 80 days (Bishop 1941, p. 47). Hatchlings and larvae are rarely collected during surveys due to low detectability. Larvae and small individuals hide beneath small stones in gravel beds (Nickerson and Mays 1973a, p. 12; LaClaire 1993, p. 2). Although there is little information on the diet of larval hellbenders, it is generally believed that aquatic insects comprise their primary food source. In one of the few studies on larval diet, Pitt and Nickerson (2006, p. 69) found that the stomach of a larval Eastern hellbender from the Little River in Tennessee exclusively contained aquatic insects.

During or shortly after eggs are laid, males and females may prey upon their own and other individuals' clutches. Most hellbenders examined during the breeding season contain between 15 and 25 eggs in their stomachs (Smith 1907, p. 26). Males frequently regurgitate eggs (King 1939, Pfingsten 1990 p. 548; Pfingsten 1990, p. 49), and females sometimes eat their own eggs while ovipositing (laying) them (Nickerson and Mays 1973a, p. 46). Topping and Ingersol (1981, p. 875) found that up to 24 percent of the gravid (egg-bearing)

females examined from the Niangua River in Missouri retained their eggs and eventually reabsorbed them.

Range

Ozark hellbenders are endemic to the White River drainage in northern Arkansas and southern Missouri (Johnson 2000, pp. 40-41), historically occurring in portions of the Spring, White, Black, Eleven Point, and Current Rivers and their tributaries (North Fork White River, Bryant Creek, and Jacks Fork) (LaClaire 1993, p. 3). Currently, hellbenders are considered extirpated in the mainstem White, Black, and Spring Rivers and Jacks Fork, and their range has been considerably reduced in the remaining rivers and tributaries.

The other subspecies of hellbender, the eastern hellbender, occurs in central and eastern Missouri (in portions of the Missouri drainage in south-central Missouri and the Meramec (Mississippi drainage), but its range does not overlap with that of the Ozark hellbender. The eastern hellbender's range extends eastward to New York, Georgia, and the States in between.

Population Estimates and Status

Evidence indicates Ozark hellbenders are declining throughout their range (Wheeler *et al.* 2003, pp. 153 and 155), and no populations appear to be stable. Declines have been evident throughout the range of the eastern hellbender as well, which receives protective status in many eastern States.

At the request of the Saint Louis Zoo's Wildcare Institute, the Conservation Breeding Specialist Group (CBSG) facilitated a Population and Habitat Viability Analysis (PHVA) for the Ozark and eastern hellbender in August 2006. Thirty workshop participants explored threats to hellbender populations and develop management actions aimed at understanding and halting their decline. Using the software program Vortex (v9.61), the CBSG team prepared and presented a baseline model for hellbender populations and worked through the input parameters with the participants to optimize the model and determine current and projected mean population sizes for all current populations in 75 years (Briggler *et al.* 2007, p. 8 and pp. 80-86). The results of the model are presented in the river-specific population accounts below.

A description of what we know about Ozark hellbender populations follows (including current population estimates from the hellbender PHVA (Briggler *et al.* 2007, pp. 83-84)).

White River – There are only two hellbender records from the main stem of the White River. In 1997, a hellbender was recorded in Baxter County, Arkansas (Irwin 2008, pers. comm.). No hellbenders were found during a 2001 survey of the lower portion of the White River, but in 2003, an angler caught a specimen in Independence County, Arkansas (Irwin 2008, pers. comm.). We do not know whether a viable population exists (or whether hellbenders are able to exist) in the main stem of the White River or if the individuals captured are members of a relic population that was separated from the North Fork White River population by Norfork Reservoir. Much of the potential hellbender habitat (we do not know whether this habitat was historically occupied) was destroyed by the series of dams constructed in the 1940s and 1950s on the upper White River, including Beaver, Table Rock, Bull Shoals, and Norfork Reservoirs.

North Fork White River – The North Fork White River (North Fork) historically contained a considerable hellbender population. In 1973, results of a mark-recapture study indicated approximately 1,150 hellbenders within a 1.7-mile (mi) (2.7-kilometer (km)) reach of the North Fork in Ozark County, Missouri, with a density of one individual per 26.2 to 32.8 sq ft (8 to 10 sq m; Nickerson and Mays 1973b, p. 1165). Ten years later, hellbender density in a 2.9-mi (4.6-km) section of the North Fork in the same county remained high, with densities between one per 19.7 sq ft (6 sq m) and one per 52.5 sq ft (16 sq m; Peterson *et al.* 1983, p. 230). Individuals caught in this study also represented a range of lengths from 6.8 to 21.7 in (172 to 551 millimeters (mm)), indicating that reproduction was occurring in this population, and most individuals were sized between 9.8 and 17.7 in (250 and 449 mm). In a 1992 qualitative study in Ozark County, Missouri, 122 hellbenders were caught during 49 person-hours of searching the North Fork (Ziehmer and Johnson 1992, p. 2). Those individuals ranged in length from 10 to 18 in (254 to 457 mm), and no average size was included in that publication.

Until the 1992 study, the North Fork population appeared to be relatively healthy. However, in a 1998 study of the same reach of river censused in 1983 (Peterson *et al.* 1983, pp. 225-231) and using the same collection methods, only 50 hellbenders were captured (Wheeler *et al.* 1999, p. 18). These individuals ranged in length from 7.9 to 20.0 in (200 to 507 mm), with most between 15.7 and 19.7 in (400 and 500 mm), and were on average significantly longer than those collected 20 years earlier (Wheeler 1999, p. 15). This shift in length distribution was not a result of an increase in maximum length of individuals; instead, there were fewer individuals collected in the smaller size classes. To compare results between these qualitative and quantitative studies, Wheeler *et al.* (1999, p. 4) converted historical hellbender collections (Peterson *et al.* 1983, pp. 225-231) to numbers of individuals caught per day. In addition, the other studies that were not included in that conversion (Peterson *et al.* 1988, pp. 291-303; Ziehmer and Johnson 1992, pp. 1-5) have been converted here. For comparison purposes, one search day is defined as 8 hours of searching by 3 people (24 person-hours). The use of "search day" may be an underestimate of actual effort, and this conservative estimate of effort will likely result in a modest estimate of hellbender population declines. Therefore, in 1983, approximately 51 hellbenders were caught per search day (Peterson *et al.* 1983, pp. 225-231). In 1992, 60 hellbenders per day were caught (Ziehmer and Johnson 1992, p. 2), and, in 1998, 16 hellbenders per day were caught (Wheeler 1999, p. 12).

The North Fork had been considered the stronghold of the species in Missouri, and the populations inhabiting this river had been deemed stable (Ziehmer and Johnson 1992, p. 3; LaClaire 1993, pp. 3-4). However, these populations now appear to be experiencing declines similar to those in other streams. The collection of young individuals has become rare, indicating little recruitment. Although Briggler (2008a, pers. comm.) did find some younger hellbenders in this river during his 2005 surveys, he has not found any larvae despite extensive effort. In species such as the hellbender, which are long lived and mature at a relatively late age, detecting declines related to recruitment can take many years, as recruitment under healthy population conditions is typically low (Nickerson and Mays 1973a, p. 54). In 2006, hellbender experts (researchers and State herpetologists) estimated the current population in the North Fork to be 200 individuals (Briggler *et al.* 2007, p. 83). In surveys conducted between 1969 and 1979, researchers caught from 8 to 12 hellbenders per hour (Nickerson and Briggler 2007, p. 213). For comparison, surveys of the same 15.5-mi (25-km) section of the North Fork in 2005 and 2006 averaged 0.5 hellbenders per hour (Nickerson and Briggler 2007, p. 213). Therefore, a dramatic decline is apparent in the North Fork.

Bryant Creek– Bryant Creek is a tributary of the North Fork in Ozark County, Missouri, which flows into Norfork Reservoir. Ziehmer and Johnson

(1992, p. 2) expected to find hellbenders in this stream during an initial survey, but none were captured or observed after 22 person-hours. This apparent lack of the species conflicted with reports from Missouri Department of Conservation (MDC) personnel and an angler who reported observations of fairly high numbers of hellbenders in Bryant Creek during the winter months (Ziehmer and Johnson 1992, p. 3). A subsequent survey of the creek resulted in the capture of six hellbenders (Wheeler *et al.* 1999, p. 7), confirming the existence of a population in this tributary. This population, however, is isolated from the other North Fork White River populations by Norfork Reservoir, which could contribute to this population's apparent small size. During MDC surveys conducted in 2007, no individuals were found in areas where the six individuals were found in 1998. However, five individuals were found in areas of Bryant Creek not surveyed in 1998. This population has been historically low and is not considered viable (Briggler 2008b, pers. comm.).

Black River – There is one documented record of a hellbender in the Black River above its confluence with the Strawberry River on the Independence–Jackson County line (Arkansas) in 1978 (Irwin 2008, pers. comm.). Portions of the Black River in Missouri were surveyed in 1999 by researchers at Arkansas State University, but no hellbenders were observed (Wheeler *et al.* 1999, p. 18). Currently, the Black River does not appear to have conditions suitable for hellbenders, although it may have been occupied before intensive agricultural practices were begun in the area (Irwin 2008, pers. comm.). The Black River is presumed to be part of the historical range of the subspecies, because hellbenders have been documented in several of its tributaries, including the Spring, Current, and Eleven Point Rivers (Firschein 1951, p. 456; Trauth *et al.* 1992, p. 83). In 2004, MDC surveyed areas in Missouri that had been searched in 1999 (Wheeler *et al.* 1999, p. 18), as well as areas not searched in 1999 that had anecdotal reports of hellbenders. No hellbenders were found during this 2–day survey. The habitat was considered less than ideal because it was predominantly composed of igneous rocks, which lack the cracks and crevices necessary for hellbender inhabitance. Parts of the Black River, with suitable dolomite rock, might have contained a small population at one time (Briggler 2008b, pers. comm.).

Spring River – The Spring River, a tributary of the Black River, flows from Oregon County, Missouri, south into Arkansas. Hellbender populations have been found in the Spring River near Mammoth Spring in Fulton County, Arkansas (LaClaire 1993, p. 3). In the early 1980s, 370 individuals were captured during a mark-recapture study along 4.4 mi (7 km) of stream south of Mammoth Spring (Peterson *et al.* 1988, p. 293). Hellbender density at each of the two surveyed sites was fairly high (approximately one per 75.5 square (sq) ft (23 sq m) and one per 364 sq ft (111 sq m)). These individuals were considerably larger than hellbenders captured from other streams during the same time period, with 74 percent of Spring River hellbenders having a total length of more than 17.7 in (450 mm), with a maximum length of 23.6 in (600 mm) (Peterson *et al.* 1988, p. 294). This may indicate that Spring River populations are genetically distinct from other hellbender populations. This speculation was upheld by the conclusions of a genetic study of the Spring, Current, and Eleven Point River populations (Kucuktas *et al.* 2001, pp. 131-135). In 1991, surveyors searched 10 sites for hellbenders along a 16.2-mi (26-km) stream reach but observed only 20 individuals during 41 search-hours over a 6–month period (Trauth *et al.* 1992, p. 83). This 6–month survey included the two sites surveyed in the early to mid-1980s in which surveyors captured 370 hellbenders, along with eight additional sites upstream and downstream (Peterson *et al.* 1988, pp. 291-303; Trauth *et al.* 1992, p. 83). No size class information is available, although the large sizes of captures reported in Peterson *et al.* (1988, p. 294) may be indicative of a population experiencing little recruitment.

Researchers with Arkansas State University surveyed the Spring River from autumn 2003 through spring 2004, performing 50 hours of search effort and finding only four Ozark hellbenders. These animals were removed from the river and were housed at the Mammoth Spring National Fish Hatchery but have since died, most likely due to water quality issues at the hatchery. Arkansas State University researchers found four and one individual during 2005 and 2006 surveys, respectively. Hellbenders have declined in this stream and have likely succumbed to the threats of water quality degradation, aquatic vegetation encroachment, and illegal commercial and scientific collection (Irwin 2008, pers. comm.). Although experts estimated the population in the Spring River to be at most 10 individuals, the population in this river is considered extirpated and the possibility of this stream being re-inhabited under present conditions is minimal because of the magnitude of habitat degradation (Briggler *et al.* 2007, p. 83; Irwin 2008, pers. comm.).

Eleven Point River – The Eleven Point River, a tributary of the Black River that occurs in Missouri and Arkansas, has been surveyed several times since the 1970s. Wheeler (1999, p. 10) analyzed historical data. In 1978, 87 hellbenders were captured in Oregon County, Missouri, over a 3–day period, yielding an average of 29 hellbenders per day. From 1980 to 1982, 314 hellbenders were captured in the same area in 9 collection days, yielding an average of 35 hellbenders per day; hellbender body lengths over that period ranged from 4.7 to 17.8 in (119 to 451 mm). In 1988, Peterson *et al.* (1988, p. 293) captured 211 hellbenders from the Eleven Point River and estimated hellbender density to be approximately one per 65.6 sq ft (20 sq m). Total lengths of these individuals ranged from 4.7 to 17.7 in (120 to 450 mm), with most between 9.8 and 13.8 in (250 and 350 mm). Although the data were not analyzed for captures per day, it can be estimated that approximately 40 hellbenders were caught per day during this study.

In 1998, Wheeler (1999, p. 10) captured 36 hellbenders over 4 days from the same localities as Peterson *et al.* (1988, p. 292), for an average of nine hellbenders per day. These hellbenders were larger than those captured previously, with total lengths of 12.8 to 18.0 in (324 to 457 mm), and there were considerably fewer individuals in the smaller size classes. For comparison, a survey of Peterson *et al.* (1988, p. 293) localities in 2005 resulted in a total of 31 hellbenders captured, yielding an average of 2.6 hellbenders captured per day (using the search day conversion method presented in the North Fork White River discussion). Population declines and reduced recruitment in the Eleven Point River in Missouri are indicated (through past survey data), although hellbenders are consistently reported during surveys in the Eleven Point River in Arkansas (Irwin 2008, pers. comm.).

Recently in Arkansas (2005 and 2007), however, no more than two or three individuals were caught per day. Specifically, the catch per person-hour in 2005 was 1.1 hellbenders and in 2007 was 0.9 hellbenders for surveys conducted on the Eleven Point River in Arkansas (Irwin 2008, pers. comm.). Portions of the Eleven Point River watershed in Missouri are owned by the Federal Government and managed to protect stream and riparian areas from erosion. However, the watershed in

Arkansas is all privately owned with increased threat from stream bank clearing and unrestricted cattle access, which have an increased effect (through increased siltation and water quality degradation) on remaining populations (Irwin 2008, pers. comm.). In 2006, hellbender experts (researchers and State herpetologists) estimated the current Eleven Point River population to be 200 individuals in Arkansas and 100 individuals in Missouri (Briggler *et al.* 2007, p. 83).

Current River – The Current River had not been surveyed extensively until the 1990s. Nickerson and Mays (1973a, p. 63) reported a large hellbender population in this stream, but no numbers were presented. In 1992, Ziehmer and Johnson (1992, p. 2) found 12 hellbenders in 60 person-hours in Shannon County, Missouri, or approximately 5 hellbenders per day using the same search day conversion as presently used. These individuals ranged in length from 4.5 in (115 mm) to more than 15.0 in (380 mm; maximum length was not reported), with most between 13.0 and 15.0 in (330 and 380 mm). In 1999, 14 hellbenders were collected over 3 collection days (approximately 5 hellbenders per day), also in Shannon County, Missouri, and the individuals ranged from 14.8 to 20.3 in (375 to 515 mm), with most between 17.7 to 19.7 in (450 to 499 mm; Wheeler 1999, p. 12). The average size of individuals increased by nearly 4 in (100 mm), indicating this population must have a lack of recruitment. In 2005 and 2006, researchers found a total of 22 hellbenders throughout the Current River in a total of 100 hours spent searching (equivalent to 1.8 hellbenders per day). In 2006, hellbender experts estimated the current population in the Current River to be 80 individuals (Briggler *et al.* 2007, p. 83).

Jacks Fork – Jacks Fork, a tributary of the Current River, was surveyed for hellbenders for the first time in 1992 (Ziehmer and Johnson 1992, p. 2). Four hellbenders were collected over 66 person-hours, equating to roughly 2 hellbenders per day. The individuals were large, ranging from 13.0 to 16.9 in (330 to 430 mm). No hellbenders were found during investigations of Jacks Fork in 2003 and 2006.

Previous Federal Action

We first identified the Ozark hellbender as a candidate species in a notice of review published in the **Federal Register** on October 30, 2001 (66 FR 54808). The Ozark hellbender was given a listing priority number of 6 due to non-imminent threats of a high magnitude.

On May 11, 2004, we received a petition dated May 4, 2004, from The Center for Biological Diversity to list 225 candidate species, including the Ozark hellbender. We received another petition on September 1, 2004 (dated August 24, 2004), from Missouri Coalition for the Environment and Webster Groves Nature Study Society requesting emergency listing of the Ozark hellbender. Based on information presented in that petition, we determined that emergency listing was not warranted at the time. We notified the petitioners by letter of this determination in November 2004. Our finding on that petition was included in a May 11, 2005, notice of review published in the **Federal Register** (70 FR 24870).

In the May 11, 2005, notice of review we changed the listing priority number (LPN) for the Ozark hellbender from 6 to 3, the highest priority category for a subspecies, because of the increased immediacy of threats since the Ozark hellbender was elevated to candidate status in 2001. The threat of particular concern was the annual increases in recreational pressures on Ozark hellbender rivers. Because collection for trade is considered a primary threat, we coordinated with our Division of Management Authority to develop, concurrent with this proposal, a proposal to list the hellbender (both subspecies) in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Elsewhere in today's **Federal Register**, the Service proposes to list the hellbender, including both subspecies, in Appendix III of CITES.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) as follows: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In the context of the Act, the term "threatened species" means any species or subspecies or, for vertebrates, Distinct Population Segment (DPS) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term "endangered species" means any species, subspecies, or for vertebrates, DPS, that is in danger of extinction throughout all or a significant portion of its range. The Act does not define the term "foreseeable future."

The application of the five factors to the Ozark hellbender (*Cryptobranchus alleganiensis bishopi)* is as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

One of the most likely causes of the decline of the Ozark hellbender in the White River system in Missouri and Arkansas is habitat degradation resulting from impoundments, ore and gravel mining, sedimentation, nutrient runoff, and nest site disturbance from recreational uses of the rivers (Williams *et al.* 1981, p. 99; LaClaire 1993, pp. 4-5). Hellbenders are habitat specialists that depend on consistent levels of dissolved oxygen, temperature, and flow (Williams *et al.* 1981, p. 97). Therefore, even minor alterations to stream habitat are thought to be detrimental to hellbender populations.

Impoundments

Impoundments impact stream habitat in many ways. When a dam is built on a free-flowing stream, riffle and run habitats are converted to lentic (still), deep water habitat. As a result, surface water temperatures tend to increase, and dissolved oxygen levels tend to decrease (Allan and Castillo 2007, pp. 323-324 and pp. 97-98). Hellbenders depend upon highly vascularized lateral skin folds for respiration. Therefore, lakes and reservoirs are unsuitable habitat for Ozark hellbenders, because these areas have lower oxygen levels and higher water temperatures (Williams *et al.* 1981, p. 97; LaClaire 1993, p. 5) than do fast-flowing, cool-water stream habitats. Impoundments also fragment hellbender habitat, blocking the flow of immigration and emigration between populations (Dodd 1997, p. 178). The resulting small, isolated populations are more susceptible to environmental perturbation and demographic stochasticity, both of which can lead to local extinction (Wyman 1990, p. 351).

In the upper White River, construction of Beaver, Table Rock, Bull Shoals, and Norfork dams in the 1940s and 1950s destroyed the potential hellbender habitat upstream of Batesville, Arkansas, and effectively isolated hellbender populations. Norfork Dam was constructed on the North Fork in 1944 and has isolated

Ozark hellbender populations in Bryant Creek and the White River from populations in the North Fork. Populations downstream of Beaver, Table Rock, Bull Shoals, and Norfork dams were likely extirpated due to hypolimnetic releases from the reservoir. Hypolimnetic releases are cooler than normal stream temperatures because they are from a layer of water that is below the thermocline, and the water from this layer is typically reduced of oxygen because it is noncirculating or does not "turn over" to the surface. Additionally, the tailwater zones below dams experience extreme water level fluctuations and scouring for many miles downstream. This impacts hellbender populations by washing out the pebbles and cobbles used as cover by juveniles and creating unpredictable habitat conditions outside the Ozark hellbender's normal range of tolerance.

Mining

Gravel mining, which has occurred in a number of streams within the historical range of the Ozark hellbender, has directly contributed to Ozark hellbender habitat alteration and loss. Dredging results in stream instability both up and downstream of the dredged portion (Box and Mossa 1999, pp. 103-104). Head cutting, in which the increase in transport capacity of a dredged stream causes severe erosion and degradation upstream, results in extensive bank erosion and increased turbidity levels (Allan and Castillo 2007, p. 331). Reaches downstream of the dredged stream reach often experience aggradation (raised stream bed from build-up of sediment) as the sediment transport capacity of the stream is reduced (Box and Mossa 1999, p. 104). Gravel mining physically disturbs hellbender habitat in dredged areas, and associated silt plumes can impact various aspects of the hellbender's life requisites (nesting habitat, eggs, prey). In addition, these effects reduce crayfish populations, which are the primary prey species for Ozark hellbenders. Gravel dredging is widespread in the White River systems in southern Missouri and northern Arkansas (LaClaire 1993, p. 4).

Portions of the Ozark plateau have a history of being major producers of lead and zinc, and some mining activity still occurs in the southeastern Ozarks, though at less than historical levels. Results of a U.S. Geological Survey (USGS) water quality study conducted from 1992 to 1995 in the Ozark plateau (Peterson *et al.* 1998, pp. 12-13) revealed that concentrations of lead and zinc in bed sediment and fish tissue were substantially higher at sites with historical or active mining activity. These concentrations were high enough to suggest adverse biological effects, such as reduced enzyme activity or death of aquatic organisms. Because hellbenders have highly permeable skin and obtain most of their oxygen through subcutaneous respiration, they are particularly susceptible to absorbing contaminants such as lead and zinc. Furthermore, because Ozark hellbenders are long lived, they may be at higher risk of bioaccumulation of harmful chemicals (Peterson *et al.* 1998, pp. 12-13). Although mining for lead and zinc no longer occurs within the range of the Ozark hellbender, Petersen *et al.* showed elevated concentrations were still present in the streams where mining occurred historically (1998, p. 12). Although it is possible for these metals to be transported and diluted, they will not degrade over time; therefore, it is likely that lead and zinc concentrations found over 10 years ago in these rivers would remain similar today (Mosby 2008, pers. comm.). In addition, there are historical lead and zinc mining sites that are near Ozark hellbender populations on the North Fork in Ozark County (Mosby 2008, pers. comm.).

Increased lead and zinc contamination input to the Current River by way of the active Sweetwater Mine on Adair Creek in Reynolds County, Missouri, is a potential future risk. Adair Creek is a tributary of Logan Creek, a losing stream (loses water as it flows downhill) connected to Blue Spring, which discharges to the Current River. Although lead and zinc contaminants have been found in Logan Creek, there is no evidence that contaminants from Sweetwater mine have made it to Blue Spring. However, if the current tailings dam on Adair Creek fails, which could be "a real possibility," large concentrations of lead and zinc would be added to Blue Spring and the Current River (Mosby 2008, pers. comm.).

Water Quality

Despite the claim by some that many Ozark streams outwardly appear pristine, Harvey (1980, pp. 53-60) clearly demonstrated that various sources of pollution exist in the ground water in the Springfield–Salem Plateaus of southern Missouri. In comparing ground-water quality of sites within the Ozark Plateaus (including Arkansas and Missouri) with other National Water-Quality Assessment Program (NAWQA) sites, Petersen *et al.* (1998, pp. 9-10) documented that nitrate concentrations in parts of the Springfield Plateau aquifer were higher than in most other NAWQA drinking-water aquifers, and could possibly affect hellbenders by inhibiting their growth, impairing their immune systems, and overall causing increased stress. Those study areas were within the current distribution of Ozark hellbenders in Arkansas and Missouri.

Nitrogen and phosphorus are essential plant nutrients found naturally in streams. Elevated concentrations of these nutrients, however, cause increased growth of algae and aquatic plants in many streams and are detrimental to aquatic biota (Petersen *et al.* 1998, p. 6). In the Ozark plateau, water is contaminated by nutrients from increased human waste (in part due to rapid urbanization and increased numbers of septic systems), fertilizers (including land application of chicken litter (poultry manure, bedding material, and wasted feed)), logging, and expanded industrial agricultural practices such as concentrated animal feeding operations. A continuing source of sedimentation and contamination is agriculture, which comprises a large percentage of the land use within the range of the Ozark hellbender (Wheeler *et al.* 2003, p. 155). Missouri is the second largest beef cattle-producing State in the nation, with the majority of animal units produced in the Ozarks. Both Arkansas and Missouri are leading States in poultry production. The NAWQA data collected in the Ozarks in 1993-1995 from wells and springs indicated that nitrate concentrations were strongly associated with the percentage of agricultural land near the wells or springs. Livestock wading in streams, poor agricultural practices that degrade vegetated riparian areas, and faulty septic and sewage treatment systems have resulted in elevated nitrate levels (Petersen *et al.* 1998, pp. 6-8 and 15).

Increased recreational use (such as from canoeing, kayaking, rafting, inner tube floating, and small horsepower motorboating) also impacts the water and habitat quality in rivers inhabited by the Ozark hellbender. In 2003, the Missouri Department of Natural Resources added an 8-mi (13-km) stretch of the Jacks Fork River to the U.S. Environmental Protection Agency Consolidated 2002 Missouri (303(d)) list of impaired waters for organic wastes (fecal coliform). Likely sources of the contamination include runoff from a commercial horse trail ride outfitter, horse stream crossings, and effluent from campground pit-toilets (Davis and Richards 2002, pp. 1, 3, and 36).

The 303(d) list included additional rivers inhabited by Ozark hellbenders. A 21-mi (34-km) stretch of the Eleven Point River was listed as impaired due

to unacceptable levels of chlorine and atmospheric deposition of mercury. Increased mercury levels have been implicated as a potential cause in the decline of other aquatic amphibians, such as the northern dusky salamander (*Desmognathus fuscus fuscus*; Bank *et al.* 2006, pp. 234-236). Water quality monitoring on both the North Fork White and Eleven Point Rivers in Missouri detected 21 chemicals and elevated levels of estrogen in male hellbenders collected during 2002 and 2003, respectively (Huang 2004, pers. comm.). The Spring River has also suffered from many water quality perturbations over recent decades. In the late 1980s, the West Plains (Missouri) wastewater treatment plant failed, depositing all stored waste into the Spring River. In addition, the majority of the Ozarks region in Missouri and Arkansas is composed of karst topography (caves, springs, sinkholes, and losing streams), which further complicates transport of potential contaminants.

Siltation

Sediment inputs from land use activities have, and continue to, significantly contribute to habitat degradation. Nickerson and Mays (1973a, pp. 55-56) cite a personal communication from S. Minton in which sediment accumulation is suspected of destroying eggs and juvenile hellbenders. Hellbenders are intolerant of sedimentation and turbidity (Nickerson and Mays 1973a, pp. 55-56), which can impact them in several ways:

(1) Sediment deposition of cover rocks reduces or removes suitable habitat for adults and can cover and suffocate eggs.

(2) Sediment fills interstitial spaces in pebble or cobble beds, reducing suitable habitat for larvae and subadults (FISRWG 1998, chapter 3, p. 19 and p. 25).

(3) Suspended sediment loads can cause water temperatures to increase, as there are more particles to absorb heat, thereby reducing dissolved oxygen levels (Allan and Castillo 2007, pp. 323-324).

(4) Sedimentation can impede the movement of individuals and colonization of new habitat (Routman 1993, p. 412).

(5) The Ozark hellbender's highly permeable skin causes them to be negatively affected by sedimentation. Various chemicals, such as pesticides, bind to silt particles and become suspended in the water column when flushed into a stream. The hellbender's permeable skin provides little barrier to these chemicals, which can be toxic (Wheeler *et al.* 1999, pp. 1-2).

(6) Sedimentation may result in a decline of prey abundance by embedding cover rocks.

Timber harvest and associated activities (construction and increased use of unpaved roads, skid trails, and fire breaks) are prominent in many areas within the range of the Ozark hellbender and increase terrestrial erosion and sedimentation into streams. Peak stream flows often rise in watersheds with timber harvesting activities, due in part to compacted soils resulting from construction of roads and landings (where products are sorted and loaded for transportation) and vegetation removal (Allan and Castillo 2007, p. 332; Box and Mossa 1999, pp. 102-103). The cumulative effects of timber harvest on sedimentation rates may last for a couple of decades, even after harvest practices have ceased in the area (Frissell 1997, pp. 102-104).

Improperly designed and maintained roads cause marginally stable slopes to fail, and they also capture surface runoff and channel it directly into streams (Allan and Castillo 2007, pp. 321-322 and 340). Erosion from roads contributes more sediment than the land harvested for timber (Box and Mossa 1999, p. 102).

Unrestricted cattle access to streams increases erosion and subsequent sediment loads (Clary and Kinney 2002, p. 145). This is particularly a concern for the Eleven Point River in Arkansas (Irwin 2008, pers. comm.). Riparian pasture "retirement" or exclusion of grazing has proven to be an effective means of reducing surface runoff pollutant loads to waterways. Runoff levels of sediment, in addition to phosphorus, particulate- and nitrate-nitrogen concentrations, have been found to be lower at retired riparian pasture than at currently grazed riparian pasture sites (Hoorman and McCutcheon 2005, p. 9).

Disturbance

Habitat disturbance affects hellbender survival in several rivers. Most rivers and streams inhabited by hellbenders are extremely popular with canoeists, kayakers, rafters, inner tube floaters, or low-horsepower motorboat operators. In fact, canoe, kayak, and motor and jet boat traffic continues to increase on the Jacks Fork, Current, Eleven Point, and North Fork Rivers. On the North Fork River, an average of five canoes per weekday were observed in 1998, and in 2004, that figure increased to 21 canoes per weekday (Pitt 2005, pers. comm.). Due to the increasing popularity of these float streams, the National Park Service is evaluating options that will reduce the number of boats that can be launched daily by concessionaires (Poe 2004, pers. comm.). Hellbenders encountered with gashes in their heads suggest that watercraft traffic likely impact these animals. New roads, boat ramps, and other river access points have been constructed, which lead to increased river access and increased disturbance to hellbenders (Briggler *et al.* 2007, p. 64). Off-road vehicle (ORV) recreation is also widespread throughout the Ozarks region. ORVs frequently cross rivers inhabited by hellbenders and are driven in riverbeds where the water is shallow enough to enable this form of recreation. The force delivered by a boat or ORV hitting a rock could easily injure or kill a hellbender, in addition to destroying hellbender habitat. ORV activity also increases erosion and sedimentation by exposing bare erodible soils in areas with frequent activity.

The practice of removing large rocks and boulders (by hand, machinery, or dynamite) to reduce damage to canoes is common on many hellbender streams (Nickerson and Mays 1973a, p. 56; Wheeler *et al.* 1999, p. 4). Rocks are also removed by gardeners for landscaping. Rock turning and flipping is also done by crayfish hunters and hobbyists and independent researchers (Briggler *et al.* 2007, p. 61 and p. 66). The areas under these large rocks are important habitat for cover and nest sites; therefore, overturning or removing these rocks can diminish available cover and nest sites for hellbenders.

Best Management Practices (BMPs)

Currently, a number of activities that can and do result in habitat degradation are outside of regulatory oversight. There are no regulatory requirements to implement BMPs to protect water quality from timber management actions. Existing BMPs by the Arkansas Forestry Commission and Missouri Department of Conservation lack mandatory requirements for implementing methods to reduce aquatic resource impacts associated with timber management. Timber harvest activities (for example, logging decks, increased use of unpaved roads, improperly designed and maintained roads, skid trails, fire breaks) result in erosion and sedimentation. Additionally, there are no laws or regulations that preclude livestock from grazing in riparian corridors and loafing in streams and rivers.

Summary of Habitat Destruction and Modification

The threats to the Ozark hellbender from habitat destruction and modification are occurring throughout the entire range of the subspecies. These threats include impoundments, mining, water quality degradation, siltation, and disturbance from recreational activities.

The effects of impoundments on Ozark hellbenders are significant because impoundments alter habitat directly, isolate populations, and change water temperatures and flows below reservoirs. Remaining Ozark hellbender populations are small and isolated, in part due to increased impoundments over time, making hellbenders vulnerable to individual catastrophic events and reducing the likelihood of recolonization after localized extirpations.

Habitat destruction and modification from siltation and water quality degradation present a significant and immediate threat to the Ozark hellbender. We believe these are the primary causes of the population decline. Siltation and water quality degradation are caused by industrialization, agricultural runoff, mine waste, and activities related to timber harvesting. Increased siltation affects hellbenders in a variety of ways, such as suffocating eggs, eliminating suitable habitat for all life stages, reducing dissolved oxygen levels, increasing contaminants (that bind to sediments), and reducing prey populations. Increased nitrate levels and fecal coliform, along with a variety of other contaminants from agricultural runoff and increased urbanization, have been detected in hellbender streams, which not only pose a threat directly to hellbenders but also to Ozark aquatic ecosystems in general.

Recreational pressure (for example, boat traffic, horseback riding, and ORV use) in streams inhabited by Ozark hellbenders has increased substantially on an annual basis, directly disturbing the habitat. Most hellbender rivers are popular with canoeists, kayakers, rafters, inner tube floaters, and motorboat operators. Removing large rocks and boulders to reduce damage to canoes is a common practice. Gardeners remove rocks for use in landscaping. Crayfish hunters, hobbyists, and independent researchers turn and flip rocks. This disturbance is significant because areas under large rocks are important habitat for cover and nest sites; therefore, overturning and removing these rocks reduces available cover and nest sites for hellbenders. The threats of rock removal and overturning are expected to continue or even increase as these recreational activities grow in popularity.

B. Overutilization for commercial, recreational, scientific, or educational purposes.

Anecdotal reports indicate that Ozark hellbenders have been collected for commercial and scientific purposes (Trauth *et al.* 1992, p. 85). Although commercial collections are currently illegal in both Missouri and Arkansas, information provided by Nickerson and Briggler (2007, pp. 207-212) indicates that Ozark hellbenders are sold for the pet trade. Because of their protected status in Missouri and Arkansas, any actions involving interstate or foreign commerce of Ozark hellbenders collected from these states would be prohibited by the Federal Lacey Act (16 U.S.C. 3371-3378).

In Arkansas, hellbenders may be collected with a scientific collecting permit from the AGFC; however, no permits are being issued currently or are anticipated to be issued in the future because the State acknowledges the severely imperiled status of the subspecies (Irwin 2008, pers. comm.). Missouri imposed a moratorium on hellbender collecting from 1991 to 1996 and has since issued only limited numbers of scientific collecting permits (Horner 2008, pers. comm.). Despite these restrictions, illegal collecting for the pet trade has been documented (Nickerson and Briggler 2007, pp. 208-209) and remains a threat throughout the range Briggler (2008b, pers. comm.).

The illegal and legal collection of hellbenders for research purposes, museum collections, zoological exhibits, and the pet trade has undoubtedly been a contributing factor to hellbender declines. Nickerson and Briggler (2007, pp. 208-211) documented the removal of 558 hellbenders (approximately 300 animals illegally) from the North Fork White River from 1969 to 1989. Anecdotal information suggests unauthorized collection of animals on the Spring River in Arkansas contributed to the recent population crash, as reaches of the Spring River that formerly contained 35 to 40 have had no individuals present for more than 10 years (Irwin 2008, pers. comm.). The decline is linked to unauthorized collecting because Ozark hellbenders were located in one small, easily accessible area of the Spring River, and no other event (such as a storm or chemical spill) had occurred in that area that would explain such a rapid decline (Irwin 2008, pers. comm.). Such amphibians as the hellbender (a relatively slow-moving, aquatic species) may be collected with little effort, making them even more susceptible to this threat.

The unauthorized collection of hellbenders, primarily for the pet trade, remains a major concern. In 2001, an advertisement in a Buffalo, New York, newspaper was selling hellbenders for $50 each (Mayasich *et al.* 2003, p. 20). In 2003, a pet dealer in Florida posted an Internet ad that offered "top dollar" for large numbers of hellbenders (wanted in groups of at least 100; Briggler 2007, pers. comm.). Also in 2003, a person in Pennsylvania had an Internet posting stating specifically that an Ozark hellbender was wanted, no matter the price or regulatory consequence (Briggler 2007, pers. comm.). At the 2005 Hellbender Symposium, it was announced that U.S. hellbenders were found for sale in Japanese pet stores, which is likely the largest market for this species (Briggler, pers. comm. with Okada, 2005). In Japan, the majority of hellbenders are sought for pets rather than for food (Briggler, pers. comm. with Okada, 2005). As Ozark hellbenders become rarer, their market value is likely to increase. In fact, listing the subspecies as endangered may also enhance the subspecies potential commercial value as the rarity of the subspecies is made public.

Few U.S. species listed under the Act have commercial value in trade; however, the Ozark hellbender does. Due to the market demand and the apparent willingness of individuals to collect hellbenders illegally, we believe that any action that publicly discloses the location of hellbenders (such as publication of specific critical habitat maps or locations) puts the species in further peril. For example, due to the threat of unauthorized collection and trade, the Missouri Department of Conservation and Arkansas Game and Fish Commission have implemented extraordinary measures to control and restrict information on the locations of Ozark hellbenders and no longer make location and survey information readily available to the public.

Recreational fishing may also negatively impact Ozark hellbender populations due to animosity towards hellbenders, which some anglers believe to be poisonous and to interfere with fish production (Gates *et al.* 1985, p. 18). In addition, there are unpublished reports of hellbenders accidentally killed by frog or fish gigging (spearing), when a hellbender may get speared inadvertently (Nickerson and Briggler 2007, pp. 209 and 212). The MDC reports that gigging popularity and pressure have increased, which

increases a potentially significant threat to hellbenders during the breeding season when they tend to move greater distances and congregate in small groups where they are an easy target for giggers (Nickerson and Briggler 2007, p. 212). The gigging season for suckers (fish mainly in the Catostomidae family) spans the reproductive season of the Ozark hellbender in the North Fork White River and overlaps that of the hellbender in other river basins as well. The sucker gigging season opens September 15, during the peak breeding period when hellbenders are most active and, therefore, most exposed. Gigging is popular in hellbender streams to such a degree that marks are often noticed on the bedrock and the river bottom from giggers' spears (Briggler 2007, pers. comm.). Although the chance of finding a gigged hellbender can be limited (due to presence of scavengers and the fast decomposition rate of amphibians), two gigged hellbenders were found along the stream bank on the North Fork White River in 2004 (Huang 2007, pers. comm.). In their studies of Missouri hellbenders, Nickerson and Mays (1973a, p. 56) found dead gigged specimens, and they reference data showing how susceptible the species is to this threat. Ozark hellbenders are sometimes unintentionally caught by anglers. However, catching hellbenders while fishing is not a frequent occurrence and is not believed to be a significant threat to the species, especially if anglers follow instructions posted by the Missouri Department of Conservation to remove the hook or cut the fishing line and return the hellbender to the stream (Briggler 2009, pers. comm.).

Summary of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Ozark hellbender is a rare and unique amphibian that has experienced extensive collection from the wild for various reasons. Due to the continued decline of the Ozark hellbender and history of its collection, State agencies in Missouri and Arkansas have implemented measures to reduce the threat of collection. These measures include moratoriums on issuance of scientific collecting permits; prohibiting the collection, possession, and sale of hellbender under appropriate State wildlife statutes; and controlling information on the location of hellbenders. The unauthorized collection of Ozark hellbenders for commercial sale in the pet trade, however, continues to be a significant threat.

C. Disease or predation

Disease (Chytridiomycosis)

Background — Chytridiomycosis (also known as chytrid fungus), a highly infectious amphibian disease caused by the pathogen *Batrachochytrium dendrobatidis*, is recently recognized to have a significant negative effect on the Ozark hellbender. *B. dendrobatidis* has been demonstrated to infect and kill all life stages of an increasing number of amphibian species worldwide (Berger *et al.* 1998, pp. 9031-9036). The Ozark hellbender is now included on the ever-increasing global list of amphibian species potentially affected by this fatal pathogen (Speare and Berger 2005, pp. 1-9).

The chytrid fungus attacks the keratinized tissue of amphibians' skin, which can lead to clinical signs of disease presence, such as thickened epidermis, lesions, body swelling, lethargy, abnormal posture, loss of righting reflex, and death (Daszak *et al.* 1999, pp. 737-738; Bosch *et al.* 2001, p. 331; Carey *et al.* 2003, p. 130). It is believed that the amphibian chytrid fungus originated from Africa with the African clawed frog *(Xenopus laevis)*, used throughout the United States in the 1930s and 1940s for pregnancy testing. This pathogen is now found on all continents except Asia, where species are currently being tested (Weldon *et al.* 2004, pp. 2100-2105; Speare and Berger 2005, pp. 1-9).

Currently, there are two theories on the development of the chytrid fungus as a global amphibian pathogen. One theory is that the chytrid fungus is not a new pathogen, but has increased in virulence or in host susceptibility caused by other factors (Berger *et al.* 1998, p. 9036). The other, more widely supported theory is that *B. dendrobatidis* is an introduced species whose spread has been described as an epidemic 'wave-like' front (Lips *et al.* 2006, pp. 3166-3169; Morehouse *et al.* 2003, p. 400).

B. dendrobatidis lives in aquatic systems in which it 'swims' (using spores) through the water and reproduces asexually. *B. dendrobatidis* develops most rapidly at 73.4 °F (23 °C) in culture, with slower growth rate at 82.4 °F (28 °C) and reversible stop of growth at 84.2 °F (29 °C; Daszak *et al.* 1999, p. 741). The temperatures in Ozark streams are ideal for the spread and persistence of this pathogen. Based on U.S. Geological Survey water data from 1996-2006, the maximum temperature of these hellbender streams is 77.0 to 80.6 °F (25 to 27 °C), although the average water temperature over 1 year (for Eleven Point, Current, and North Fork White River) is approximately 59.0 to 60.8 °F (15 to 16 °C; Barr 2008, pers. comm.) .

Persistence of the chytrid fungus may be further enhanced by saprophytic development (obtaining nourishment from dead or decaying material in water; Daszak *et al.* 1999, p. 740). Johnson and Speare (2003, pp. 923-924) found that *B. dendrobatidis* can survive saprophytically outside the amphibian host for up to 7 weeks in lake water and 3 to 4 weeks in tap water. Further, Carey *et al.* (2003, p. 130) found that amphibians can be infected when placed either in water containing zoospores that were placed specifically in the water, or in water from which infected animals have been recently removed. The possibility that *B. dendrobatidis* can develop for even a short period of time outside the amphibian host may greatly increase its impact and accelerate host population declines (Carey *et al.* 2003, p. 130). Also, the possibility of long-term survival of *B. dendrobatidis* as a saprophyte may explain the lack of recolonization of streams from which amphibians, such as the Ozark hellbender, have been extirpated (Daszak *et al.* 1999, p. 740). Moreover, hellbenders that are not already infected with the pathogen are continually at risk because temperatures are ideal for the persistence of the chytrid fungus in the water (without a host) for a long period.

Habitat specializations and a variety of underlying predisposing environmental factors may make an animal more vulnerable to exposure to the pathogen, especially for species such as the Ozark hellbender that carry out their life cycle in aquatic rather than terrestrial habitats (Carey *et al.* 2003, p. 131). Since the Ozark hellbender lives in an aquatic system throughout its entire life, there is no possibility for relief from this pathogen. Climate change is one of the environmental factors that has been indicated as a key promoter in the spread of the *B. dendrobatidis* pathogen (Pounds *et al.* 2006, pp. 161-167). Rachowicz *et al.* (2006, pp. 1676-1682) found that chytridiomycosis was implicated in the local extirpations of two species of frog, and they conclude with high confidence that large-scale warming was the key factor in the disappearances of these two species. Although environmental factors (for example, increased UV-B, chemical pollution, climate change) may predispose amphibian populations to pathogens, evidence suggests that cofactors are not required for chytridiomycosis to cause mass amphibian deaths (Daszak *et al.* 1999, p. 741).

Overall, chytridiomycosis has been implicated in local population extirpations, sustained population declines, and possibly species extinctions for many amphibian species (Berger *et al.* 1998, pp. 9031-9036; Bosch *et al.* 2001, pp. 331-337). Chytrid fungi are the best supported pathogen related to amphibian declines, with over 93 species worldwide affected as of 2005 (Collins and Storfer 2003, pp. 89-98; Daszak *et al.* 2003, pp. 141-150; Speare and Berger 2005, p. 1). For example, in surveys conducted by Lips *et al.* (2006, pp. 3165-3166) in Costa Rica and Panama, over only a few months of surveying, frog and salamander species richness and amphibian density declined by more than 60 percent and 90 percent, respectively.

Disease in captive hellbenders — The St. Louis Zoo maintains a captive population of Ozark and eastern hellbenders. In March 2006, there was a power outage in the Zoo's herpetarium, including the area where the hellbenders are held. Soon after the power outage (which may have stressed the hellbenders and reduced their immunity), several hellbenders were observed "with substrate (rocks) sticking to the skin and many were floating" (Duncan 2007, pers. comm.). More than 75 percent of the captive population whose death occurred from March 2006 through April 2007 (59 individuals) likely resulted directly from *B. dendrobatidis.* As Randall Junge, Doctor of Veterinary Medicine, Director of Animal Health and Nutrition at the St. Louis Zoo (2007, pers. comm.) stated, "* * * in our captive [hellbender] population, it [chytridiomycosis] is the leading cause of mortality. In my opinion, if this disease becomes established throughout the hellbender range, it will have a significant [further] impact on the population." Deaths relating to chytridiomycosis continue as the zoo staff searches for an effective way to treat infected animals (Utrup 2007, pers. comm.).

Disease in wild hellbenders — As a result of the incident of *B. dendrobatidis* in the St. Louis Zoo hellbender population, in 2006 the Missouri Department of Conservation began testing wild hellbenders in Missouri for infection by the pathogen. All Ozark hellbender streams surveyed had individual hellbenders that tested positive for the pathogen (Briggler 2008b, pers. comm.). Data from 2006 and 2007 show that, for the presence of *B. dendrobatidis* within the Current River, 20 percent of the population is positive (heavily positive in a few locations); within the Eleven Point River (Missouri and Arkansas), 16 percent is positive (positives spread throughout river); and within the North Fork of the White River, 15 percent is positive (positives spread throughout river) (Briggler 2008b, pers. comm.). These results indicate the minimum number of infected individuals since polymerase chain reaction (PCR) tests for *B. dendrobatidis* may produce false negative results if the infection is localized in different tissues than were analyzed (Beard and O'Neill 2005, p. 594). The only Ozark hellbender river not surveyed for the pathogen was the Spring River, where the subspecies is believed to be extirpated (Irwin 2008, pers. comm.). During future surveys, all animals encountered (new and re-captures) will be tested for the presence of *B. dendrobatidis*. Researchers view the presence of *B. dendrobatidis* as one of the most, if not the most, challenging factors affecting the survival of this subspecies (Briggler *et al.* 2007, p. 83).

Since there is clear evidence that chytridiomycosis, a fatal disease in captive Ozark hellbenders, also has been documented in the wild Ozark hellbender population, it is crucial that we not only research techniques to combat this disease, but also address all other threats that may be linked to susceptibility (degraded environmental conditions). The immediacy of this threat has been significantly heightened since this pathogen has been found to occur in all remaining populations of the Ozark hellbender. Researchers are in agreement that this subspecies will have little chance of survival if factors significantly affecting the hellbender are not ameliorated to some degree, especially in light of the additional severe threat of chytridiomycosis (Utrup 2008, pers. comm.).

Abnormalities

Wheeler *et al.* (2003, pp. 250-251) investigated morphological aberrations in the hellbender over a 10–year period. They obtained deformity data from salamanders that were examined during population and distributional surveys in the Eleven Point River, North Fork of the White River, and Spring River dating back to 1990. They found a variety of abnormal limb structures, including missing toes, feet, and limbs. Additional abnormalities encountered include epidermal lesions, blindness, missing eyes, and bifurcated limbs. Three hellbenders were documented with tumors on their bodies in the Spring River in Arkansas. Currently, we are unable to evaluate the importance of these abnormalities in light of the recent precipitous decline in hellbenders observed in these rivers. Briggler (2007, pers. comm.) is evaluating and compiling additional information on these abnormalities and lesions, including the frequency of occurrence. Several hellbenders with these abnormalities were x-rayed and are being analyzed by Jeff Briggler, Missouri Department of Conservation. One hellbender with extreme abnormalities (all limbs missing) was sacrificed and sent to U.S. Geological Survey's (USGS) Wildlife Disease Lab in Madison, Wisconsin, for necropsy, where the conclusive cause for the individual's missing limbs and digits could not be determined.

In 2004, 72 percent of Ozark hellbenders captured had abnormalities present. For reference, 49 percent of eastern hellbenders captured in Missouri had abnormalities (Briggler 2007, pers. comm.). In 2006, 90 percent of Ozark hellbenders surveyed from the Eleven Point River (Missouri), 73 percent from the Current River, and 67 percent from the North Fork of the White River had abnormalities (Briggler 2007, pers. comm.). In general, abnormalities in Ozark hellbenders are becoming increasingly common and severe, often to a level that the animals are near death (for example, missing digits on all or most limbs, missing all or most limbs; Briggler 2007, pers. comm.). Most, if not all, hellbenders collected in the past decade from the Spring River have had some type of major malformity or lesions (Davidson 2008, pers. comm.). In fact, a hellbender found in the Spring River in 2004 was missing all four feet and was covered in lesions and a fungal growth externally and inside its mouth; this animal died within 15 minutes of capture (Davidson 2008, pers. comm.). Although these abnormalities have not been linked conclusively with the presence of *B. dendrobatidis*, considering the types of abnormalities documented (for example, lesions, digit and appendage loss, epidermal sloughing), there may be a connection (Briggler 2007, pers. comm.).

Predation

Trout stocking has increased in recent years both in Missouri and Arkansas. In Missouri, both nonnative brown trout (*Salmo trutta*) and nonnative rainbow trout (*Oncorhynchus mykiss)* have been sporadically introduced into Ozark area waters for recreational fishing purposes since the 1800s. The 2003 MDC Trout Management Plan calls for increased levels of stocking as well as increasing the length of cold water streams that will be stocked with brown and rainbow trout (Missouri Department of Conservation 2003, pp. 31-32). Nonnative trout are stocked in all rivers

that historically and currently contain hellbenders (rainbow trout: Niangua, Gasconade, Big Piney, Current, North Fork White, Eleven Point, and Spring rivers; brown trout: Niangua, Gasconade, North Fork White, and Current Rivers) in Missouri (Missouri Department of Conservation 2003, pp. 24-26). In Arkansas, the Arkansas Game and Fish Commission is currently working with the U.S. Army Corps of Engineers to improve cold water releases from mainstem dams along the White River, to improve conditions for trout below the reservoirs (U.S. Army Corps of Engineers 2008, pp. 1-40).

Introduced fishes have had dramatic negative effects on populations of amphibians throughout North America (Bradford 1989, pp. 776-778; Funk and Dunlap 1999, pp. 1760-1766; Gillespie 2001, pp. 192-196; Pilliod and Peterson 2001, pp. 326-331; Vredenburg 2004, pp. 7648-7649). Rainbow trout and brown trout are considered opportunists in diet, varying their diet with what is available, including larval amphibians (Smith 1985, p. 231; Pflieger 1997, pp. 224-225). Brown trout grow bigger and tolerate a wider range of habitats than rainbow trout and, therefore, may be a more serious threat to hellbenders, particularly at the larval stage. Dunham *et al.* (2004, pp. 19-24) assessed the impacts of nonnative trout in headwater ecosystems in western North America. The authors documented at least eight amphibian species that exhibited negative associations with nonnative trout in mountain lakes, specifically regarding the occurrence or abundance of larval life stages of native amphibians. Also, salamander species, such as the long-toed salamander (*Ambystoma macrodactylum*), have been extirpated from waterbodies in high-elevation lakes in western North America due to stocked nonnative trout (Pilliod and Peterson 2001, p. 330).

Preliminary data suggest that larval hellbenders from declining populations in Missouri do not recognize brown trout as dangerous predators. In contrast, larvae from more stable southeastern (U.S.) populations that co-occur with native trout show "fright" responses to brown trout (Mathis 2008a, pers. comm.). A recent study conducted by Gall (2008, pp. 1-86) confirmed results found with this preliminary data on Missouri hellbender populations.

Gall (2008, p. 3) examined hellbender (Ozark and eastern) predator–prey interactions by (1) studying the foraging behavior of predatory fish species (native and nonnative (trout)) in response to the presence of hellbender secretion (a potentially noxious chemical cue produced by stressed hellbenders), (2) comparing the number of secretion-soaked food pellets consumed by rainbow and brown trout, and (3) comparing the response of larval hellbenders to chemical stimuli from native and nonnative predatory fishes. Gall (2008, p. 23, pp. 30-31) found that brown trout were attracted to the secretion emitted by hellbenders, and hellbender secretions were more palatable to brown trout than to rainbow trout. Also, although hellbenders exhibited only weak fright responses when exposed to trout stimuli, they responded with strong fright responses to native predatory fish.

Gall (2008, p. 63) suggests that the limited evolutionary history between salmonids (brown and rainbow trout) and hellbenders in Missouri is likely responsible for the weak fright behavior exhibited by hellbenders in response to trout stimuli. Although brown and rainbow trout are a threat to hellbenders, results from this study indicate that rainbow trout are less of an immediate concern than brown trout (Gall, pp. 63-64). This may be due to the difference in diet of the two species; rainbow trout maintain a predominately invertebrate diet throughout their lives and brown trout switch from predominately invertebrate prey to predominately vertebrate prey (including salamanders) at about 8.7 in (22 cm) in length (Gall 2008, p. 60). Overall, this study found evidence that predation by introduced trout cannot be ruled out as a factor affecting the Ozark hellbender and possibly contributes to the decline of both Ozark and eastern hellbender populations in Missouri (Gall 2008, p. 63).

In addition to brown trout, walleye (*Stizostedion vitreum*), although a native species, have been stimulated to approach prey more often and faster in the presence of hellbender secretions (Gall 2008, pp. 23-24). This may be a concern if walleye are further stocked in hellbender streams, because walleye share similar activity periods with hellbenders (Mathis 2008b, pers. comm.).

Summary of Disease or Predation

The discovery of the presence of *Batrachochytrium dendrobatidis* (chytridiomycosis) in 2006 within all remaining populations of the Ozark hellbender has made increased protection even more important to the persistence of this subspecies (Utrup 2007, pers. comm.). This pathogen occurs throughout the entire range of the Ozark hellbender and is determined to be a significant threat to the subspecies. The threat from chytridiomycosis is significant and immediate because: (1) It is proven to be a fatal pathogen to Ozark hellbenders in captivity, and (2) in the wild, all streams with extant Ozark hellbender populations have individuals that tested positive for the pathogen (Briggler 2008b, pers. comm.). In addition, although it is unclear if there is a connection to chytridiomycosis, abnormalities found on Ozark hellbenders are increasingly severe, often to a level that the animal is approaching death (Briggler 2008a, pers. comm.). Researchers view chytridiomycosis as one of the most serious threats to the survival of this subspecies (Briggler *et al.* 2007, p. 83).

Nonnative trout are stocked in all rivers that historically and currently contain hellbenders in Missouri. Predation of larval hellbenders by nonnative trout possibly contributes to the decline of Ozark hellbender populations in Missouri and may be a growing concern if predatory fish continue to be stocked (or are stocked in larger numbers) in hellbender streams.

D. The inadequacy of existing regulatory mechanisms.

In Arkansas, hellbenders may be collected with a scientific collecting permit from the AGFC; however, no permits are anticipated to be issued now or in the future because the State acknowledges the severely imperiled status of the subspecies (Irwin 2008, pers. comm.). Although Arkansas does not have a State endangered and threatened species list, the State considers the Ozark hellbender a nongame species and prohibits collection without a permit. The Ozark hellbender is a State-endangered species in Missouri, which prohibits importation, exportation, transportation, sale, purchase, taking, and possession of the species without a permit. MDC placed a moratorium on hellbender collecting from 1991 to 1996 and has since allowed only limited numbers of collecting permits (Horner 2008, pers. comm.). Despite receiving maximum protection by both States, continued unauthorized collecting for the pet trade has been documented and remains a threat throughout the range.

Clean Water Act

Although the Clean Water Act of 1972 (CWA (Pub. L. 92-500)) resulted in an overall gain in water quality in streams, degraded water quality still is a significant factor affecting such highly sensitive aquatic organisms as the Ozark hellbender. Non-point pollution sources (for example, animal and human waste, agricultural practices, increased road construction) may be causing much of

the degraded water quality throughout the Ozark hellbender's range. This is more apparent in stretches of rivers that are not within federally or State protected lands (Irwin 2008, pers. comm.).

The court's decision in *American Mining Congress v. U.S. Army Corps of Engineers* (D.D.C. 1997) resulted in the U.S. Army Corps of Engineers deregulating gravel removal activities under section 404 of the CWA. The court found that "de-minimus" or incidental fallback of sand and gravel into the stream from which it was being excavated did not constitute the placement of fill by the mining operation. Hence, the court ruled that the Army Corps of Engineers had exceeded their authority in requiring a permit for this activity. Although these activities no longer require a Clean Water Act 404 permit, commercial operations in Missouri must apply for a State permit through the Missouri Department of Natural Resources Land Reclamation Program. Modifications of stream channels associated with gravel mining, as well as the removal of pebbles and cobble that are important microhabitat for larvae and subadults, contribute to the decline of Ozark hellbenders in these systems.

Lacey Act

State regulations for gigging and for trout stocking do not protect the Ozark hellbender. The gigging season for suckers (fish mainly in the Catostomidae family) spans the reproductive season of the Ozark hellbender in the North Fork White River and overlaps that of the hellbender in other river basins as well. The sucker gigging season opens annually on September 15, during the peak breeding period when hellbenders are most active and, therefore, most exposed. The 2003 MDC Trout Management Plan calls for increased levels of stocking as well as increasing the length of cold water streams that will be stocked with brown and rainbow trout (Missouri Department of Conservation 2003, pp. 31-32). In Arkansas, the Arkansas Game and Fish Commission is currently working with the U.S. Army Corps of Engineers to improve cold water releases from mainstem dams along the White River to improve conditions for trout below the reservoirs (U.S. Army Corps of Engineers 2008, pp. 1-40).

Under section 3372(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378), it is unlawful to import, export, transport, sell, receive, acquire, or purchase any wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States. This prohibition of the Lacey Act would apply in instances where a person engages in a prohibited act with an Ozark hellbender unlawfully collected from Federal lands, such as those Federal lands within the range of the Ozark hellbender that are owned and managed by the U.S. Forest Service or the National Park Service. It is unlawful under section 3372(a)(2)(A) of the Lacey Act Amendments of 1981 to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State.

Because it is a violation of Missouri and Arkansas laws and regulations to sell, purchase, or engage in any actions relating to the commercial trade of Ozark hellbenders (for example, import, export, ship, or transport), any interstate or foreign commerce of the Ozark hellbender would result in a violation of the Lacey Act Amendments of 1981. However, if an Ozark hellbender is not declared as the subspecies but rather as hellbender or eastern hellbender, then it would be difficult for the wildlife inspector to identify it as the prohibited subspecies. Although the prohibitions and penalties of the Lacey Act Amendments of 1981 provide some protection for the Ozark hellbender, this law, by itself, does not adequately prevent or reduce the illegal commercial trade of hellbenders.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The unauthorized collection and trade of Ozark hellbenders within the United States and internationally is of growing concern, particularly as rarity increases and, consequently, commercial value increases. The Ozark hellbender is not listed on the appendices of CITES. CITES is an international agreement between governments with the purpose of ensuring that international trade in wild animals and plants does not threaten their survival. CITES listing of the Ozark hellbender would aid in curbing unauthorized international trade of hellbenders.

Elsewhere in today's **Federal Register**, the Service is proposing to include the hellbender (both the eastern and Ozark subspecies) in Appendix III of CITES. CITES can list species in one of three appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. Appendix II also includes species that CITES must regulate so that trade in other listed species may be brought under effective control (for example, because of similarity of appearance between listed species and other species). Appendix III includes native species identified by any Party country that needs to be regulated to prevent or restrict exploitation; under Appendix III, that Party country requests the help of other Parties to monitor and control the trade of that species. Based on the criteria described in 50 CFR 23.90, the eastern and the Ozark hellbenders qualify for listing in CITES Appendix III. Listing all hellbenders in Appendix III is necessary to allow us to adequately monitor international trade in the taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies. Appendix–III listings will lend additional support to State wildlife agencies in their efforts to regulate and manage hellbenders, improve data gathering to increase our knowledge of trade in hellbenders, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade.

Summary of the Inadequacy of Existing Regulatory Mechanisms

Some existing regulatory mechanisms provide protection for the Ozark hellbender and its habitat. Existing Federal and State water quality laws can be applied to protect water quality in streams occupied by the hellbender. The requirement for a U.S. Army Corps of Engineers dredge and fill permit under section 404 of the Clean Water Act has resulted in an overall gain in water quality. However, ongoing gravel mining in hellbender streams is no longer regulated by the Corps of Engineers under section 404 of the Clean Water Act. Although the Lacey Act provides some protection, the current regulatory mechanisms are not adequate to protect Ozark hellbenders from unauthorized collection for commercial sale in the pet trade. The Service has also proposed, but not finalized, listing the eastern and Ozark hellbender in Appendix III of CITES. Nonetheless, even if the CITES listing is finalized, it would only apply to the export of hellbenders from the United States.

E. Other natural or manmade factors affecting its continued existence.

Small, Isolated Populations – The small size and isolation of remaining populations of the Ozark hellbender make it vulnerable to extinction due to genetic drift, inbreeding depression, and random or chance changes to the environment (Smith 1990, pp. 311-321) that can significantly impact hellbender habitat. Inbreeding depression can result in death, decreased fertility, smaller body size, loss of vigor, reduced fitness, and various chromosome abnormalities (Smith 1990, pp. 311-321). Despite any evolutionary adaptations for rarity, habitat loss and degradation increase a species' vulnerability to extinction (Noss and Cooperrider 1994, pp. 58-62). Numerous authors (such as Noss and Cooperrider 1994, pp. 58-62; Thomas 1994, p. 373) have indicated that the probability of extinction increases with decreasing habitat availability. Although changes in the environment may cause populations to fluctuate naturally, small and low-density populations are more likely to fluctuate below a minimum viable population (the minimum or threshold number of individuals needed in a population to persist in a viable state for a given interval; Gilpin and Soule 1986, pp. 25-33; Shaffer 1981, p. 131; Shaffer and Samson 1985, pp. 148-150).

The loss of genetic diversity in Ozark hellbenders is illustrated by Routman's (1993, p. 410-415) study, in which hellbender populations from different rivers showed very little within-population variability, and relatively high between-population variability. Due to this population fragmentation, local extirpations cannot be naturally repopulated. Current factors negatively affecting the habitat of the Ozark hellbender may exacerbate potential problems associated with its low population numbers and the isolation of those small populations from each other, which increases the chances of this species going extinct.

Recruitment and Reproductive Capability - The hellbender's late sexual maturity leads to a higher risk of death prior to reproduction and lengthened generation times (Congdon *et al.* 1993, pp. 831-832). Hellbender specimens less than 5 years of age are uncommon (Taber *et al.* 1975, pp. 636-637; Pfingsten 1990, p. 49), and recent research has indicated that the age structure has shifted, resulting in the prevalence of older individuals (Pfingsten 1990, p. 49; Wheeler *et al.* 2003, p. 153 and p. 155).

Because hellbenders are long-lived, a population may not be highly dependent on recruitment to remain extant (Mayasich *et al.* 2003, p. 22). Empirical and theoretical evidence suggests, however, that the amount of generation overlap within a population (high survivorship among juveniles) is necessary to maintain stable populations (Congdon *et al.* 1993, pp. 830-832; Ellner and Hairston 1994, pp. 413-415). Lack of sufficient recruitment may be limiting the population stability and the ability of hellbender populations to maintain genetic diversity as their habitat is altered (Wheeler *et al.* 2003, p. 155). Pfingsten (1990, p. 49) also cautions, however, that lack of larvae detection could mean that the larvae occupy a microhabitat that has yet to be surveyed.

Unger (2003, pp. 30-36) compared several measures of sperm production between male Ozark and eastern hellbenders in Missouri and eastern hellbender males from more stable populations in North Carolina and Georgia. Sperm counts were significantly lower for males from both tested Missouri populations than for males from southeastern populations. Populations were not significantly different with respect to sperm viability and motility. The sperm of Missouri males had proportionally smaller heads for their tail lengths; this difference was relatively small, but was statistically significant. There is a clear need to direct resources toward determining the cause of the apparent reduction in sperm counts for males from declining populations in Missouri. Because motility and viability appeared unaffected, artificial insemination might be a viable conservation technique, although limited efforts to date have been successful (Unger 2003, pp. 65-66).

The extremely low number or lack of juveniles in most Ozark hellbender populations is a significant sign that little reproduction has occurred in these populations for several years. Late age of reproductive maturity, when paired with a long lifespan, can disguise population declines resulting from activities that occurred years earlier until the adults begin dying and numbers begin declining from lack of recruitment. The present distribution and status of Ozark hellbender populations in the White River system in Arkansas and Missouri are exhibiting such a decline (Wheeler *et al.* 2003, p. 155). Genetic studies have repeatedly demonstrated very low genetic diversity in hellbender populations, which may be a factor in the decline of the species (Routman 1993, Kucuktas *et al.* 2001). The current combination of population fragmentation, disease, and habitat degradation will prohibit this species from recovering without the intervention of conservation measures designed to facilitate hellbender recovery.

Summary of Other Natural or Manmade Factors Affecting Its Continued Existence

The small size and isolation of Ozark hellbender populations and loss of genetic diversity could exacerbate other factors negatively affecting the subspecies and accelerate possible extinction. These factors are particularly detrimental when combined with the factors affecting the hellbender, such as of habitat loss, water quality degradation, chytridiomycosis, and unauthorized collection and trade.

Proposed Determination

Although no clear estimates exist for how many Ozark hellbenders historically inhabited Missouri and Arkansas, surveys over recent years have documented a severe decline in all populations. To illustrate this decline, consider the current total range-wide population estimate of 590 (Briggler *et al.* 2007, p. 83) compared to the results of one 1973 study indicating approximately 1,150 hellbenders within less than 1.2 mi (2 km) of one occupied river (Nickerson and Mays 1973b, p. 1165).

In addition to the severe population declines, the known factors negatively affecting and subsequent threats to the Ozark hellbender have continued to increase since we elevated the species to candidate status in 2001 (66 FR 54808; October 30, 2001). In particular, the discovery of the presence of *Batrachochytrium dendrobatidis* (chytridiomycosis) in 2006 within all remaining populations of the Ozark hellbender has made increased protection even more important to persistence of this subspecies (Utrup 2007, pers. comm.). Researchers view chytridiomycosis as one of the most serious threats to the survival of this subspecies, which has a total estimated population size of 590 individuals (Briggler *et al.* 2007, p. 83).

The decrease in Ozark hellbender population size and the shift in age structure are likely caused in part by a variety of historical and ongoing activities. It is believed that one of the primary causes of these trends is habitat destruction and modification from siltation and water quality degradation. The sources include industrialization, agricultural runoff, mine waste, and activities related to timber harvesting. Increased siltation affects hellbenders in a variety of ways, such as suffocating eggs, eliminating suitable habitat for all

life stages, reducing dissolved oxygen levels, increasing contaminants (that bind to sediments), and reducing prey populations. Increased nitrate levels and fecal coliform, along with a variety of other contaminants from agricultural runoff and increased urbanization, have been detected in hellbender streams, which not only negatively affects hellbenders directly but also the Ozark aquatic ecosystems in general. Impoundments alter habitat directly, isolate populations, and change water temperatures and flows below reservoirs. Remaining Ozark hellbender populations are small and isolated, in part due to increased impoundments over time, making hellbenders vulnerable to individual catastrophic events and reducing the likelihood of recolonization after localized extirpations.

Recreational pressure (for example, boat traffic, horseback riding, and ORV use) in streams inhabited by Ozark hellbenders has increased substantially on an annual basis, directly disturbing the habitat. Fish and frog gigging popularity and pressure continue to increase, presenting a significant threat to hellbenders during the breeding season (Nickerson and Briggler 2007, pp. 209-211). Trout stocking continues to occur on hellbender streams both in Missouri and Arkansas. The lack of larval and sub-adult hellbenders present may be attributed to predation by nonnative stocked trout. The increase in number or size of recreational boats and tubes, commercial horse trail ride outfitters, and ORV use has increased disturbance and contamination (for example, fecal coliform).

The unauthorized collection of hellbenders, especially for the pet trade, remains a major concern, particularly with market values continually increasing. Existing regulations targeting this significant threat, including State laws, have not been completely successful in preventing the unauthorized collection and trade of Ozark hellbenders.

The combined impact of degraded environmental conditions, along with the increased susceptibility to chytridiomycosis due to these threats, has created a situation in which the Ozark hellbender is likely to become functionally extinct (populations no longer viable) within the next couple decades. Researchers and managers agree that, while a solution is being reached to directly address the presence of the chytrid fungus within Ozark hellbender populations, all other factors significantly affecting the hellbender must be ameliorated to prevent the imminent extinction of this subspecies.

Projections from the August 2006 PHVA model concluded that the Ozark hellbender metapopulations are expected to decline by more than 50 percent in 12 to 16 years, viability of all individual populations will be low after 20 to 25 years (total individuals equaled fewer than 100 and genetic diversity was less than 90 percent), and risk of metapopulation extinction is high within 40 to 50 years. These projections may be optimistic because they are based on best-case density estimates and assume that hellbender populations within each river system are continuous and did not account for the prevalence of chytrid fungus and its possible effects on hellbenders. Hellbenders do not travel great distances, however, and subpopulations within each river system are often separated by miles (kilometers) of unsuitable habitat resulting in fragmented populations. These models projected the Ozark hellbender subspecies to be functionally extinct within 20 years (Briggler *et al.* 2007, pp. 88-90 and 97).

We determine foreseeable future on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat-projection timeframes, and environmental variability. Based on the observed population decline in the subspecies and the threats as discussed, we find that the Ozark hellbender is in danger of extinction throughout all of its range. One information source (Briggler *et al.* 2007, pp. 88-90 and p. 97) estimates that the subspecies may be functionally extinct by 2026 (less than 20 years) if we do not take actions to slow or reverse the downward trajectory.

We have carefully assessed the best scientific and commercial information available regarding past, present, and future threats to the Ozark hellbender. The population numbers continue to decline as a result of the multiple threats impacting this subspecies, increasing extinction risk. Based on the immediacy and ongoing significant threats to the subspecies throughout its entire range, we find the subspecies to be in danger of extinction throughout all of its range. Therefore, on the basis of the best -scientific and commercial information available, we are proposing to list the Ozark hellbender as an endangered species. Because we find that this subspecies meets the definition of an endangered species (in danger of extinction) throughout all of its range, it is unnecessary to analyze its status in a significant portion of its range.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement

reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features (PBFs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time these planning efforts calls for a different outcome.

Prudency Determination

Background

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following circumstances exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We have determined that both circumstances apply to the Ozark hellbender. This determination involves a weighing of the expected increase in threats associated with a critical habitat designation against the benefits gained by a critical habitat designation. An explanation of this "balancing" evaluation follows.

Increased Threat to the Taxon by Designating Critical Habitat

The unauthorized collection of Ozark hellbenders for the pet trade is a factor contributing to hellbender declines (Nickerson and Briggler 2007, p. 214) and remains a significant threat today, particularly with increasing international market values. For a detailed discussion on the threat of commercial collection, see factor B (Overutilization for commercial, recreational, scientific, or educational purposes).

The process of designating critical habitat would increase human threats to the Ozark hellbender by increasing the vulnerability of this species to unauthorized collection and trade through public disclosure of its locations. Designation of critical habitat requires the publication of maps and a very specific narrative description of critical habitat areas in the **Federal Register**. The degree of detail in those maps and boundary descriptions is far greater than the general location descriptions provided in this proposal to list the species as endangered. Furthermore, a critical habitat designation normally results in the news media publishing articles in local newspapers and special interest websites, usually with maps of the critical habitat. We believe that the publication of maps and descriptions outlining the locations of this critically imperiled taxon will further facilitate unauthorized collection and trade, as collectors will know the exact locations where Ozark hellbenders occur. Ozark hellbenders are easily collected because they are slow moving and have extremely small home ranges. Therefore, publishing specific location information would provide a high level of assurance that any person going to a specific location would be able to successfully locate and collect specimens given the species site fidelity and ease of capture once located.

Due to the threat of unauthorized collection and trade, the Missouri Department of Conservation and the Arkansas Game and Fish Commission have implemented extraordinary measures to control and restrict information on the locations of Ozark hellbenders. These agencies have expressed to the Service serious concerns with publishing maps and boundary descriptions of Ozark hellbender areas associated with critical habitat designation (Briggler and Irwin 2008, pers. comm.). The agencies believe that designating critical habitat

could negate their efforts to restrict access to location information that could significantly affect future efforts to control the threat of unauthorized collection and trade of Ozark hellbenders.

Benefits to the Species from Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PBFs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

Critical habitat only provides protections where there is a Federal nexus, that is, those actions that come under the purview of section 7 of the Act. Critical habitat designation has no application to actions that do not have a Federal nexus. Section 7(a)(2) of the Act mandates that Federal agencies, in consultation with the Service, evaluate the effects of its proposed action on any designated critical habitat. Similar to the Act's requirement that a Federal agency action not jeopardize the continued existence of listed species, Federal agencies have the responsibility not to implement actions that would destroy or adversely modify designated critical habitat. Critical habitat designation alone, however, does not require that a Federal action agency implement specific steps toward species recovery.

Ozark hellbenders primarily occur on non-Federal lands. The species occurs exclusively on private lands in Arkansas and predominately on private lands in Missouri. In Missouri, Ozark hellbenders do occur on lands managed by the National Park Service (Ozark National Scenic Riverway) and U.S. Forest Service (Mark Twain National Forest). We anticipate that some actions on non-Federal lands will have a Federal nexus (for example, requirement for a permit to discharge dredge and fill material from the U.S. Army Corps of Engineers) for an action that may adversely affect the hellbender. There is also the potential that some proposed actions by the National Park Service and U.S. Forest Service may adversely affect the hellbender. However, both of these Federal agencies are implementing measures to ensure the conservation and recovery of the hellbender on lands they manage, including active involvement in the Ozark Hellbender Working Group.

In those circumstances where it has been determined that a Federal action (including actions involving non-Federal lands) may affect the hellbender, the action would be reviewed under section 7(a)(2) of the Act. We anticipate that the following Federal actions are some of the actions that could adversely impact the Ozark hellbender: Instream dredging, channelizing, impounding water, streambank clearing, moving large rocks within or from streams, discharging fill material into the stream, or discharging or dumping toxic chemicals or other pollutants into a hellbender stream system. Under section 7(a)(2) of the Act, project impacts would be analyzed and the Service would determine if the Federal action would jeopardize the continued existence of the hellbender. The designation of critical habitat would ensure that a Federal action would not result in the destruction or adverse modification of the designated critical habitat. Consultation with respect to critical habitat will provide additional protection to a species only if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. In the absence of critical habitat, areas that support the Ozark hellbender will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as appropriate. Federal actions affecting the hellbender even in the absence of designated critical habitat areas will still benefit from consultation pursuant to section 7(a)(2) of the Act and may still result in jeopardy findings.

Another potential benefit to the Ozark hellbender from designating critical habitat is that such a designation serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. Generally, providing this information helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the affected species. Simply publicizing the proposed listing of the species also serves to notify and educate landowners, State and local governments, and the public regarding important conservation values. Furthermore, the Ozark Hellbender Working Group has developed a comprehensive outreach and education program that targets a diverse audience, including public and private landowners, organizations, and the media (Ozark Hellbender Working Group 2008, Outreach and Education Chapter).

The Ozark Hellbender Working Group, formed in 2001, is composed of personnel from Federal and State agencies, academia, zoos, non-profit organizations, and private individuals. The Ozark hellbender outreach actions implemented to date include producing and distributing stickers, posters, and videos; publishing magazine articles; working with media outlets (newspaper and television) on hellbender stories; giving presentations to local County Commissioners and other community groups; providing a profile of the Ozark hellbender in the Missouri Department of Conservation's Fishing Regulations Pamphlet; and providing annual technical assistance to volunteers like the Missouri Department of Conservation's Stream Teams working in hellbender streams. In view of the extensive, ongoing efforts to outreach and promote Ozark hellbender conservation, we believe that the designation of critical habitat would provide limited additional outreach value.

Increased Threat to the Species Outweighs the Benefits of Critical Habitat Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would increase the threat to Ozark hellbenders from unauthorized collection and trade. We believe that the risk of increasing this significant threat by publishing location information in a critical habitat designation outweighs the benefits of designating critical habitat.

A limited number of U.S. species listed under the Act have commercial value in trade. The Ozark hellbender would be one of them. Due to the market demand and willingness of individuals to collect hellbenders without authorization, we believe that any action that publicly discloses the location of hellbenders (such as critical

habitat) puts the species in further peril. The Ozark hellbender is critically imperiled, requiring a focused and comprehensive approach to reducing threats. Several measures are currently being implemented to address the threat of unauthorized collection and trade of hellbenders, and additional measures will be implemented if the species is listed under the Act. One of the basic measures to protect hellbenders from unauthorized collection and trade is restricting access to information pertaining to the location of Ozark hellbenders. Publishing maps and narrative descriptions of Ozark hellbender critical habitat would significantly affect our ability to reduce the threat of unauthorized collection and trade.

Therefore, based on our determination that critical habitat designation would increase the degree of threats to the Ozark hellbender and, at best, provide nominal benefits for this taxon, we find that the increased threat to the Ozark hellbender from the designation of critical habitat significantly outweighs any benefit of designation.

Summary of Prudency Determination

We have determined that the designation of critical habitat would increase unauthorized collection and trade threats to the Ozark hellbender. The Ozark hellbender is valued in the pet trade, and that value is likely to increase as the species becomes rarer. Critical habitat designation may provide some benefits to the conservation of the Ozark hellbender, for example, by identifying areas important for conservation. However, we have determined that the benefits of designating critical habitat for the Ozark hellbender are minimal. We have concluded that, even if some benefit from designation may exist, the increased threat to the species from unauthorized collection and trade outweighs any benefit to the taxon. A determination to not designate critical habitat also supports the measures taken by the States to control and restrict information on the locations of Ozark hellbenders and to no longer make location and survey information readily available to the public. We have, therefore, determined that it is not prudent to designate critical habitat for the Ozark hellbender.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of the species and its status by the public, landowners, and other agencies; recovery actions; requirements for Federal protection; and prohibitions against certain practices. Recognition through listing results in public awareness of the conservation status of the species and encourages conservation actions by Federal and State governments, private agencies and groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and calls for recovery actions to be carried out. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies, including the Service, to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference or consultation for the Ozark hellbender as described in the preceding paragraph include, but are not limited to: stream alterations, development of new waste water facilities that may impact water quality, stream bank clearing, timber harvesting, construction of recreational trails and facilities adjacent to streams, water withdrawal projects, pesticide registration and usage, agricultural assistance programs, mining, road and bridge construction, and Federal loan programs. Activities will trigger consultation under section 7 of the Act if they may affect the Ozark hellbender addressed in this rule.

The listing of the Ozark hellbender would subsequently lead to development of a recovery plan for this species. A recovery plan establishes a framework for interested parties to coordinate activities and to cooperate with each other in conservation efforts. The plan will set recovery priorities, identify responsibilities, and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe site-specific management actions necessary to conserve the Ozark hellbender. Additionally, under section 6 of the Act, we would be able to grant funds to the States of Missouri and Arkansas for management actions promoting the conservation of the Ozark hellbender.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the Ozark hellbender. The prohibitions, under 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, deliver, receive, carry transport, or ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened and endangered wildlife under certain circumstances. We codified the regulations governing permits for endangered and threatened species at 50 CFR 17.22 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act and associated regulations at 50 CFR 17.31. The intent of this policy is to increase public awareness of the effect of this proposed listing on proposed and ongoing activities within a species' range. We believe that the following activities are unlikely to result in a violation of section 9 of the Act:

(1) Activities authorized, funded, or carried out by Federal agencies, when such activities are conducted in accordance with an incidental take

statement issued by us under section 7 of the Act;

(2) Any action carried out for scientific research or to enhance the propagation or survival of Ozark hellbenders that is conducted in accordance with the conditions of a 50 CFR 17.22 permit;

(3) Any incidental take of Ozark hellbenders resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under 50 CFR 17.22. Non-Federal applicants may design a habitat conservation plan (HCP) for the species and apply for an incidental take permit. HCPs may be developed for listed species and are designed to minimize and mitigate impacts to the species to the maximum extent practicable.

We believe the following activities would be likely to result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized killing, collecting, handling, or harassing of individual Ozark hellbenders at any life stage;

(2) Sale or offer for sale of any Ozark hellbender as well as delivering, receiving, carrying, transporting, or shipping any Ozark hellbender in interstate or foreign commerce and in the course of a commercial activity;

(3) Unauthorized destruction or alteration of the species habitat (for example, instream dredging, channelizing, impounding of water, streambank clearing, removing large rocks from or flipping large rocks within streams, discharging fill material) that actually kills or injures individual Ozark hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering;

(4) Violation of any discharge or water withdrawal permit within the species' occupied range that results in the death or injury of individual Ozark hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering; and

(5) Discharge or dumping of toxic chemicals or other pollutants into waters supporting the species that actually kills or injures individual Ozark hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 of the Act to the Field Supervisor of the Service's Columbia Field office (see **FOR FURTHER INFORMATION CONTACT** section). You may request copies of the regulations regarding listed wildlife from and address questions about prohibitions and permits to the U.S. Fish and Wildlife Service, Ecological Services Division, Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111; Phone 612-713-5350; Fax 612-713–5292).

Peer Review

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the address shown in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A list of the references used to develop this proposed rule is available upon request (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this proposed rule are the staff members of the Columbia (Missouri) Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17-[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for "Hellbender, Ozark" in alphabetical order under AMPHIBIANS to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
Amphibians							
*	*	*	*	*		*	*
Hellbender, Ozark	*Cryptobranchus alleganiensis bishopi*	AR, MO	Entire	E		NA	NA
*	*	*	*	*		*	*

Dated: August 19, 2010.

Wendi Weber,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–22249 Filed 9–7–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

[Docket No. FWS–R9–IA–2009–0033] [96300–1671–0000–R4]

RIN 1018–AW93

Inclusion of the Hellbender, Including the Eastern Hellbender and the Ozark Hellbender, in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to include the hellbender (*Cryptobranchus alleganiensis*), a large aquatic salamander, including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention), including live and dead whole specimens, and all readily recognizable parts, products, and derivatives. Listing hellbenders in Appendix III of CITES is necessary to allow us to adequately monitor international trade in the taxon; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies.

DATES: To ensure that we are able to consider your comment on this proposed rulemaking action, you must send it by November 8, 2010.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS–R9–IA–2009–0033.
- U.S. mail or hand–delivery: Public Comments Processing, Attn: FWS–R9–IA–2009–0033; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Clifton A. Horton, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone 703–358–1908; facsimile 703–358–2298. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) Biological, trade, or other relevant data concerning any threats (or lack thereof) to this species (including subspecies), and regulations that may be addressing those threats.

(2) Additional information concerning the range, distribution, and population size of this species (including subspecies).

(3) Any information on the biological or ecological requirements of this species (including subspecies).

(4) Any information regarding legal or illegal collection of or trade in this species (including subspecies).

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

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

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule,

will be available for public inspection on *http://www.regulations.gov*, or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone 703–358–1908.

Background

CITES, an international treaty, regulates the import, export, re-export, and introduction from the sea of certain animal and plant species. CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Convention on September 13, 1973, and it entered into force on July 1, 1975, after it had been ratified by the required 10 countries. Currently 175 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

The text of the Convention and the official list of all species included in its three Appendices are available from the CITES Secretariat's website at *http://www.cites.org* or upon request from the Division of Management Authority at the address provided in **FOR FURTHER INFORMATION CONTACT** above.

Section 8A of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Convention and on amendments to the list of species in the CITES Appendices. The current U.S. CITES regulations (50 CFR part 23) took effect on September 24, 2007.

CITES Appendices

Species covered by the Convention are listed in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade, and are generally prohibited from commercial trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. It also lists species that CITES must regulate so that trade in other listed species may be brought under effective control (e.g., because of similarity of appearance between listed species and other species). Appendix III includes native species, identified by any Party, that are regulated to prevent or restrict exploitation, where the Party requests the help of other Parties to monitor and control the trade of the species.

To include a species in or remove a species from Appendices I or II, a Party must propose an amendment to the Appendices for consideration at a meeting of the CoP. The adoption of such a proposal requires approval of at least two-thirds of the Parties present and voting. However, a Party may add a native species to Appendix III independently, without the vote of other Parties, under Articles II and XVI of the Convention. Likewise, if the status of an Appendix-III species improves or new information shows that it no longer needs to be listed, the listing country can remove the species from Appendix III without consulting the other CITES Parties.

Inclusion of native U.S. species in Appendix III provides the following benefits:

(1) An Appendix-III listing ensures the assistance of the other CITES Parties, through the implementation of CITES permitting requirements in controlling international trade in the species.

(2) Listing U.S. native species in Appendix III would, in appropriate cases, enhance the enforcement of State and Federal conservation measures enacted for the species by regulating international trade in the species. Shipments containing CITES-listed species receive greater scrutiny from border officials in both the exporting and importing countries. When a shipment containing a non-listed species is exported from the United States, it is a lower inspection priority for the Service than a shipment containing a CITES-listed species. Furthermore, many foreign countries have limited legal authority and resources to inspect shipments of non-CITES-listed wildlife. Appendix-III listings for U.S. species will give these importing countries the legal basis to inspect such shipments, and deal with CITES and national violations when they detect them.

(3) Another practical outcome of listing a species in Appendix III is that records are kept and international trade in the species is monitored. We will gain and share new information on such trade with State fish and wildlife agencies, and others who have jurisdiction over resident populations of the Appendix-III species. They will then be able to better determine the impact of the trade on the species and the effectiveness of existing State management activities, regulations, and cooperative efforts. International trade data and other relevant information gathered as a result of an Appendix-III listing will help policymakers determine whether we should propose the species for inclusion in Appendix II, remove it from Appendix III, or retain it in Appendix III.

(4) When any live CITES-listed species (including an Appendix-III species) is exported (or imported), it must be packed and shipped according to the International Air Transport Association (IATA) Live Animals Regulations to reduce the risk of injury and cruel treatment. This requirement helps to ensure the survival of the animals while they are in transport.

Criteria for Listing a Native U.S. Species in Appendix III

Article II, paragraph 3, of CITES states that "Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade." Article XVI, paragraph 1, of the Convention states further that "Any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I."

At the ninth meeting of the Conference of the Parties to CITES (CoP9), held in the United States in 1994, the Parties adopted Resolution Conf. 9.25 (amended at the 10th and 14th meetings of the CoP), which provides further guidance to Parties for the listing of their native species in Appendix III. The Resolution, which is the basis for our criteria for listing species in Appendix III provided in our regulations at 50 CFR 23.90(c), recommends that a Party:

(a) Ensure that (i) The species is native to its country; (ii) Its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade or possession and provisions for confiscation; and (iii) Its national enforcement measures are adequate to implement these regulations;

(b) Determine that, notwithstanding these regulations and measures, there are indications that the cooperation of the Parties is needed to control illegal trade; and

(c) Inform the Management Authorities of other range States, the known major importing countries, the Secretariat and the Animals Committee or the Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion.

Therefore, we have used the following criteria in deciding to list U.S. species in Appendix III as outlined in 50 CFR 23.90(c):

(1) The species must be native to the country listing the species.

(2) The species must be protected under that country's laws or regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.

(3) The species is in international trade, and there are indications that the cooperation of other Parties would help to control illegal trade.

(4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinions on the potential effects of the listing.

CITES does not allow the exclusion of particular parts or products for any species listed in Appendix I or the exclusion of parts or products of animal species in Appendix II. However, Article XVI of the Convention allows for either all specimens of a species or only certain identifiable parts or products of a specimen (in addition to whole specimens) to be listed in Appendix III. For example, the current listing in CITES Appendix III of *Cedrela odorata* (Spanish cedar) by Colombia, Guatemala, and Peru includes only logs, sawn wood, and veneer sheets. Therefore, if the criteria listed above are met, we could list any designated parts or products of a species in Appendix III, if we inform the CITES Secretariat of the limited listing.

Submission of Information to the CITES Secretariat

For this listing, consultation with other range countries is not applicable since hellbenders are endemic to the United States. After reviewing the information submitted in response to this proposal, we will make a final decision on whether to include this species in CITES Appendix III. We will publish our decision in the **Federal Register**. If we decide to list the species in CITES Appendix III, we will notify the CITES Secretariat. The listing will take effect 90 days after the CITES Secretariat informs the CITES Parties of the listing.

Change in Status of Appendix-III Species Based on New Information

We monitor the trade of all U.S. Appendix-III species. If either of the following occurs, we will consider removing the species from Appendix III: (1) We determine that international trade in the species is very limited (as a general guide, fewer than 5 shipments per year or fewer than 100 individual animals or plants); and (2) we determine that trade (legal and illegal) in the species (either internationally or in interstate commerce) is not a concern. If, after monitoring the trade of any U.S. Appendix-III species and evaluating its status, we determine that the species meets the CITES criteria for listing in Appendix I or II, based on the criteria contained in 50 CFR 23.89, we will consider whether to propose the species for inclusion in Appendix I or II.

Practical Effects of Listing a Native U.S. Species in Appendix III

Permits and other requirements: The export of an Appendix-III species listed by the United States requires an export permit issued by the Service's Division of Management Authority (DMA). DMA will issue a permit only if the applicant obtained the specimen legally, without violating any applicable U.S. laws, including relevant State wildlife laws and regulations, and the live specimen is packed and shipped according to the IATA Live Animals Regulations to reduce the risk of injury and cruel treatment. DMA, in determining if the applicant legally obtained the specimen, is required to consult relevant State and Federal agencies. Since the conservation and management of these species is primarily under the jurisdiction of State agencies, we will consult those agencies to ensure that specimens destined for export were obtained in compliance with State laws and regulations. Unlike species listed in Appendices I and II, no scientific non-detriment finding is required by the Service's Division of Scientific Authority (DSA) for export of an Appendix-III species. However, DSA will monitor and evaluate the trade, to decide if there is a conservation concern that would require any further Federal action. With a few exceptions, any shipment containing wildlife must be declared to a Service Wildlife Inspector upon export and must comply with all applicable regulations.

Process, Findings, and Fees: To apply for a CITES permit, an applicant is required to furnish to DMA a completed CITES export permit application (with check or money order to cover the cost of processing the application). You may obtain information about CITES permits from our website at *http://www.fws.gov/permits/ImportExport/ImportExport.shtml* or from DMA (see **FOR FURTHER INFORMATION CONTACT**). We will review the application to decide if the export meets the criteria in 50 CFR 23.60.

In addition, live animals must be shipped to reduce the risk of injury, damage to health, or cruel treatment. We carry out this CITES requirement by stating clearly on all CITES permits that shipments must comply with the IATA Live Animals Regulations. The Service's Office of Law Enforcement (OLE) is authorized to inspect shipments of CITES-listed species during export to ensure that they comply with these regulations. Additional information on permit requirements is available from DMA (see **FOR FURTHER INFORMATION CONTACT**); additional information on declaration of shipments, inspection, and clearance of shipments is available upon request from the OLE:

U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 North Fairfax Drive, MS–LE–3000, Arlington, VA 22203; telephone 703–358–1949; facsimile 703–358–2271. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

Federal Actions

In a series of five notices published in the **Federal Register** between 1982 and 1994 (47 FR 58454, 50 FR 37958, 54 FR 554, 56 FR 58804, and 59 FR 58982), we identified the hellbender (*Cryptobranchus alleganiensis*) as a taxon native to the United States with a listing candidate status under the Endangered Species Act of category 2. At that time, taxa included in category 2 were those taxa for which we had information indicating that it was possibly appropriate to list such taxa as threatened or endangered, but for which persuasive data was not sufficiently available to support proposed rules.

We first identified the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) as a candidate species in a notice of review published in the **Federal Register** on October 30, 2001 (66 FR 54808). We gave the Ozark hellbender a listing priority number (LPN) of 6 due to nonimminent threats of a high magnitude.

On May 11, 2004, we received a petition dated May 4, 2004, from the

Center for Biological Diversity to list 225 candidate species, including the Ozark hellbender. We received another petition on September 1, 2004 (dated August 24, 2004), from The Missouri Coalition for the Environment and Webster Groves Nature Study Society requesting emergency listing of the Ozark hellbender. Based on information presented in that petition, we determined that emergency listing was not warranted at that time. We notified the petitioners of this determination in November 2004.

In a May 11, 2005, notice published in the **Federal Register** (70 FR 24870), we changed the LPN from 6 to 3 because of the increased immediacy of threats since the Ozark hellbender was elevated to candidate status in 2001. The threat of particular concern was the annual increases in recreational pressures on rivers the Ozark hellbender inhabits.

Elsewhere in today's **Federal Register**, the Service proposes to list the Ozark hellbender as federally endangered under the Endangered Species Act of 1973, as amended.

Summary of Threats

The destruction and modification of habitat, siltation, construction of dams, water quality, disease, lack of genetic variation, predation by nonnative fish, climate change, and the inadequacy of existing regulatory mechanisms have been implicated as contributing to the decline of hellbenders (Mayasich *et al.* 2003, pp. 18–24 and Briggler *et al.* 2007, pp. 16–44). Additionally, overcollecting has been considered a serious threat in some areas; a decline in hellbender populations in the early 1990s was apparently due to collecting (Stuart *et al.* 2008, p. 637). Moreover, it has been suggested that scientific collecting may have negatively impacted hellbender populations (Mayasich *et al.* 2003, p. 20).

Information on the legal and illegal take of hellbenders and the number of hellbenders that enter into the pet trade is limited. However, between 1969 and 1989, the documented harvest of 558 Ozark hellbenders from the North Fork of the White River (NFWR) in Missouri comprised 49.6 percent for scientific study, 45.9 percent for the pet trade, 1.8 percent for educational programs, and 2.7 percent that were unattributed (Nickerson and Briggler 2007, p. 208). Approximately 48.5 percent of this documented take (or 271) of 558 Ozark hellbenders was illegal and was a substantial factor in the decline of Ozark hellbender populations in the NFWR (Nickerson and Briggler 2007, p. 214). Likewise, information on the number of hellbenders that enter international trade is also limited. We have recently documented hellbenders in international trade. Also, since hellbenders are not currently a CITES-listed species, it is possible that past hellbender shipments have been recorded generically in the Service's Declaration System as non-CITES amphibians rather than as hellbenders. In addition, at the 2005 Hellbender Symposium (June 19–22, 2005, Lakeview, Arkansas), it was reported that U.S.-origin hellbenders were found for sale in Japanese pet stores, which is likely the largest overseas market for this species (Briggler, pers. comm. with Okada, 2005).

For more information on the threats contributing to the decline of hellbenders, see our proposal to list the Ozark hellbender as federally endangered under the Endangered Species Act of 1973, as amended, elsewhere in today's **Federal Register**.

Species and Subspecies for Listing in Appendix III

We propose to list the hellbender (*Cryptobranchus alleganiensis*), including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), in CITES Appendix III, including live and dead whole specimens, and all readily recognizable parts, products, and derivatives. This proposed rule, if adopted, would apply to all living and dead hellbenders and their readily recognizable parts, products, and derivatives. The term readily recognizable is defined in our regulations at 50 CFR 23.5 and means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or 50 CFR part 23.

Hellbender

The hellbender is a large, aquatic salamander attaining a maximum length of 29 inches (in) (74 centimeters (cm)) (Petranka 1998, p. 140). Native to cool, fast-flowing streams of the central and eastern United States (Briggler *et al.* 2007, p. 8), the hellbender usually avoids water warmer than 68 °Fahrenheit (F) (20 °Celsius (C)) (Stuart *et al.* 2008, p. 636). The rarity of specific habitats that hellbenders require, especially at low elevations, may severely limit hellbender migration between rivers and render the range of hellbenders highly fragmented (Sabatino and Routman 2008, p. 7). Successful migration to and colonization of new locations by hellbenders may only occur when geologic or climatic changes result in the formation of migratory paths suitable to hellbenders (Sabatino and Routman 2008, p. 8). Populations of the once-common hellbender have declined by 77 percent since the 1970s (Briggler *et al.* 2007, p. 8). Population declines are likely due to a combination of factors such as diminished water quality, human-caused siltation, collection, and persecution (Briggler *et al.* 2007, p. 8). Crayfish and small fish are the dietary mainstay of hellbenders (Petranka 1998, p. 144).

Although two hellbender subspecies are recognized, the eastern hellbender and the Ozark hellbender, the taxonomic differentiation between hellbender subspecies is not well agreed upon by experts, and discussion continues on whether the eastern hellbender and the Ozark hellbender are distinct species or subspecies (Mayasich *et al.* 2003, p. 2). Irrespective of the taxonomic differentiation of hellbenders, all currently recognized hellbender subspecies of *Cryptobranchus alleganiensis* would be included in the CITES Appendix III listing.

Eastern Hellbender and Ozark Hellbender

Eastern and Ozark hellbenders are very similar in habitat selection, movement, and reproductive biology (Nickerson and Mays 1973a, pp. 44-55). Although some differences in color pattern exist, the eastern subspecies is described as having dorsal spotting and a uniformly colored chin and the Ozark subspecies is described as having dark dorsal blotching and pronounced chin mottling (Mayasich *et al.* 2003, p. 2). Hellbender subspecies are most easily identified by geographic range (Mayasich *et al.* 2003, p. 2). The Ozark hellbender inhabits streams that drain south out of the Ozark Plateau in the highlands of Missouri and Arkansas (Sabatino and Routman 2008, p. 2). All other populations of hellbenders, including those inhabiting streams draining northward from the Ozarks, belong to the eastern hellbender subspecies (Sabatino and Routman 2008, p. 2).

Range and Distribution

The eastern hellbender ranges from southern and western New York southward to northern Georgia, Alabama, and Mississippi and westward to central Missouri (Nickerson and Mays

1973a, p. 3). It is estimated that there are over 300 metapopulations across the eastern United States, containing approximately 350,000 eastern hellbenders over one year of age (Briggler *et al.* 2007, p. 85).

Ozark hellbenders are endemic to the White River drainage in northern Arkansas and southern Missouri (Johnson 2000, pp. 40-41), historically occurring in portions of the Spring, White, Black, Eleven Point, and Current Rivers and their tributaries (North Fork White River, Bryant Creek, and Jacks Fork) (LaClaire 1993, p. 3). It is estimated that there are 4 metapopulations of Ozark hellbenders, containing approximately 600 Ozark hellbenders over one year of age (Briggler *et al.* 2007, p. 83).

Conservation Status

The hellbender is considered "Near Threatened" by the International Union for Conservation of Nature (IUCN) because the species is probably in significant decline and because of widespread habitat loss throughout much of its range. The CITES Technical Work Group of the Association of Fish and Wildlife Agencies has concluded that including hellbenders in CITES Appendix III is warranted in order to help ensure conservation of the species in the wild and to assist State agencies in regulating harvest and trade.

Eastern hellbenders are protected to varying degrees, ranging from "Not Protected" to "Endangered," by State laws within the United States. Although there are stable populations in some areas, the eastern hellbender is declining throughout its range, which includes portions of the following 16 States: Alabama, Georgia, Illinois, Indiana, Kentucky, Maryland, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

One State (North Carolina) indicates the ecological status of eastern hellbenders in that State as stable. North Carolina lists the eastern hellbender as a "Special Concern Species" and take is regulated and may occur under certain provisions.

Five States (Maryland, Missouri, New York, Pennsylvania, and Virginia) indicate the ecological status of eastern hellbenders in those States as declining or seriously declining. Maryland and Missouri list the eastern hellbender as "Endangered" and take is generally prohibited. New York lists the eastern hellbender as "Special Concern" and as a small game species with no open season. In Pennsylvania, the eastern hellbender is classified as a protected salamander with no open season. Virginia lists the eastern hellbender as "Special Concern" and adult eastern hellbenders can not be taken for private use. However, in Virginia juvenile eastern hellbenders less than six inches in total length may be used as fish bait.

One State (Georgia) indicates the ecological status of eastern hellbenders in that State as rare, lists the species as "Rare" and prohibits take. One State (Illinois) indicates the ecological status of eastern hellbenders in that State as possibly extinct, lists the species as "Endangered" and generally prohibits take.

Six States (Alabama, Mississippi, Ohio, South Carolina, Tennessee, and West Virginia) indicate that the ecological status of eastern hellbenders in those States is not known. Alabama and Mississippi classify the eastern hellbender as a non-game species; Alabama generally prohibits take while regulated take is permitted in Mississippi. Ohio lists the eastern hellbender as "Endangered" and take is generally prohibited. In South Carolina, the eastern hellbender is not protected and take is not regulated. In Tennessee, the eastern hellbender is protected as a non-game native species in need of management and take is prohibited. The eastern hellbender is not protected in West Virginia and regulated take for commercial purposes is allowed. We have not received information on the ecological status of eastern hellbenders in two States (Indiana and Kentucky). Indiana lists the species as "Endangered" and prohibits take. Kentucky lists the eastern hellbender as "Special Concern" and the species can not be taken for commercial purposes. However, in Kentucky eastern hellbenders may be collected from public waters for use as fish bait for personal use.

The Ozark hellbender only occurs in Arkansas and Missouri. The Ozark hellbender is listed as "Protected" by Arkansas and "Endangered" by Missouri and take is prohibited in both States. Despite these designations, Arkansas and Missouri indicate that the Ozark hellbender in those States is in serious decline. Evidence indicates that no populations of Ozark hellbenders appear to be stable (Wheeler *et al.* 2003, pp. 153 and 155). As stated earlier, elsewhere in today's **Federal Register**, the Service proposes to list the Ozark hellbender as federally endangered under the Endangered Species Act of 1973, as amended.

Under section 3372(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378), it is unlawful to import, export, transport, sell, receive, acquire, or purchase any wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States. This prohibition of the Lacey Act would apply in instances where hellbenders were unlawfully collected from Federal lands, such as those Federal lands within the range of hellbenders that are owned and managed by the U.S. Forest Service or the National Park Service.

It is unlawful under section 3372(a)(2)(A) of the Lacey Act to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State. Because many State laws and regulations prohibit or strictly regulate the take of hellbenders, certain acts with hellbenders acquired unlawfully under State law would result in a violation of the Lacey Act Amendments of 1981 and thus provide for federal enforcement due to a violation of State law.

Decision to Propose to List All Hellbenders in CITES Appendix III

Based on the recommendations contained in Resolution Conf. 9.25 (Rev. CoP14) and the listing criteria provided in our regulations at 50 CFR 23.90, the hellbender qualifies for listing in CITES Appendix III. Despite the protective status for hellbenders in many States, declines have been evident throughout the range of the hellbender. Existing State laws have not been completely successful in preventing the unauthorized collection and trade of hellbenders. Listing hellbenders in Appendix III is necessary to allow us to adequately monitor international trade in the taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies. An Appendix-III listing would lend additional support to State wildlife agencies in their efforts to regulate and manage hellbenders, improve data gathering to increase our knowledge of trade in hellbenders, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade. Furthermore, listing all hellbenders in Appendix III would enlist the assistance of other Parties in our efforts to monitor and control trade in this species and its subspecies.

Effect of Proposal to List Hellbender in CITES Appendix III

Our regulations at 50 CFR 23.90 require us to publish a proposed rule and a final rule for a CITES Appendix-

III listing even though, if a proposed rule is adopted, the final rule would not result in any changes to the Code of Federal Regulations. Instead, this proposed rule, if finalized, would result in DMA notifying the CITES Secretariat to amend Appendix III by including the hellbender, including its two subspecies, the eastern hellbender and the Ozark hellbender, in Appendix III of CITES for the United States. After analysis of the comments on the proposed rule, we will publish our final decision in the **Federal Register**. If this proposed rule is finalized, the listing would take effect 90 days after the CITES Secretariat informs the Parties of the listing. If we adopt a final rule, we will contact the Secretariat prior to publishing the rule to clarify the exact time period required by the Secretariat to inform the Parties of the listing.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Department of the Interior certifies that this action would not have a significant effect on a substantial number of small entities for the reasons discussed below.

This proposed rule establishes the means to monitor the international trade in a species native to the United States and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of hellbenders, we estimate that the costs to implement this rule will be less than $2,000,000 annually due to the costs associated with obtaining permits.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings: (a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." This proposed rule would not impose a legally binding duty on non-Federal Government entities or private parties and would not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This proposed rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Information that we would collect under this proposed rule on FWS Form 3–200–27 is covered by an existing OMB approval and has been assigned OMB control number 1018–0093, which expires on November 30, 2010. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*)

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. The action is categorically excluded under 516 DM 2, Appendix 1.10 in the Departmental Manual. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Takings (Executive Order 12630)

In accordance with Executive Order (E.O.) 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have determined that this proposed rule would not have significant takings implications since there are no changes in what may be exported.

Federalism (Executive Order 13132)

In accordance with E.O. 13132 (Federalism), this proposed rule would not have significant Federalism effects. A Federalism assessment is not required because this proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this proposed rule would generate information that would be beneficial to State wildlife agencies, it is not anticipated that any State monitoring or control programs would need to be developed to fulfill the purpose of this proposed rule. We have consulted the States, through the Association of Fish and Wildlife Agencies, on this proposed action. The CITES Technical Work Group of the Association of Fish and Wildlife Agencies has concluded that including hellbenders in CITES Appendix III is warranted in order to help ensure conservation of the species in the wild and to assist State agencies in regulating harvest and trade.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that this proposed action would have no effect on Tribes or tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed action is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Division of Management Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this proposed rule is Clifton A. Horton, Division of Management Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

* * * * *

Dated: August 19, 2010.

Wendi Weber,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–22251 Filed 9–7–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
Vol. 75, No. 173
Wednesday, September 8, 2010

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2010.

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

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

Agricultural Marketing Service

Title: Livestock Mandatory Reporting Act of 1999.

OMB Control Number: 0581–0186.

Summary of Collection: The Livestock Mandatory Reporting Act of 1999 (Pub. L. 106–78; 7 U.S.C. 1635–1636h) mandates the reporting of information on prices and quantities of livestock and livestock products. Under this program, certain livestock packers, livestock product processors and importers meeting certain criteria, including size as measured by annual slaughter are required to report market information to the Agricultural Marketing Service (AMS). The information is necessary for the proper performance of the functions of AMS. USDA's market news provides all market participants, including producers, with the information necessary to make intelligent and informed marketing decisions.

Need and Use of the Information: The information collected and recordkeeping requirements will serve as the basis for livestock and livestock product market news reports utilized by the industry for marketing purposes. The reports are used by other Government agencies to evaluate market conditions and calculate price levels. Economists at major agricultural colleges and universities use the reports to make short and long-term market projections. The information is reported up to three times daily and once weekly and is only available directly from those entities required to report under the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 113.

Frequency of Responses: Reporting; Weekly; Other (Daily).

Total Burden Hours: 21,512.

Agricultural Marketing Service

Title: National Organic Program.

OMB Control Number: 0581–0191.

Summary of Collection: The Organic Foods Production Act (OFPA) of 1990, Title XXI of the Food, Agriculture, Conservation and Trade Act of 1990 (Farm Bill), U.S.C. Title 7 Section 6503(a) mandates that the Secretary of Agriculture develop a national organic program. The purposes of the regulation mandated by OFPA are: (1) To establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced. The National Organic Program (NOP) regulation fulfills the requirements of the OFPA. It includes comprehensive production and handling standards, labeling provisions, requirements for the certification of producers and handlers, accreditation of certifying agents by USDA and an administrative subpart for fees, State Programs, National List, appeals, compliance and pesticide residue testing. Agricultural Marketing Service will approve programs for State governments wishing to establish State Organic Programs.

Need and Use of the Information: The information collected is used to evaluate compliance with OFPA and NOP for administering the program, for management decisions and planning, for establishing the cost of the program and to support administrative and regulatory actions in response to non-compliance with OFPA. Certifying agents will have to submit an application to USDA to become accredited to certify organic production and handling operations. Auditors will review the application, perform site evaluation and submit reports to USDA, who will make a decision to grant or deny accreditation. Producers, handlers and certifying agents whose operations are not approved have the right to mediation and appeal the decision. Reporting and recordkeeping are essential to the integrity of the organic certification system.

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

Number of Respondents: 32,600.

Frequency of Responses: Reporting: Annually; Recordkeeping.

Total Burden Hours: 1,325,736.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–22366 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2010.

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

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

Forest Service

Title: Volunteer Application for Natural Resource Agencies.

OMB Control Number: 0596–0080.

Summary of Collection: The Volunteer Act of 1972, (Pub. L. 92–300), as amended, authorizes Federal land management agencies to use volunteers and volunteer organizations to plan, develop, maintain and manage, where appropriate, trails and campground facilities, improve wildlife habitat, and perform other useful and important conservation services throughout the Nation. Participating agencies in Department of Agriculture: Forest Service and National Resources Conservation Service; Department of the Interior: National Park Service, Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs and U.S. Geological Survey; Department of Defense: U.S. Army Corps of Engineers and Department of Commerce: National Oceanic and Atmospheric Administration. Agencies will collect information using the OF 301—Volunteer Application and other forms.

Need and Use of the Information: Agencies will collect the names, addresses, and certain information about individuals who are interested in public service as volunteers. The information is used by the agencies for the purpose of contacting applicants and interviewing and screening them for volunteer positions and to manage the program. If the information is not collected, participating natural resource agencies will be unable to recruit and/or screen volunteer applicants or administer/run volunteer programs that are crucial to assisting these agencies in fulfilling their missions.

Description of Respondents: Individuals or households.

Number of Respondents: 500,000.

Frequency of Responses: Reporting: On occasion; Other: One time,

Total Burden Hours: 443,500.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–22367 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Farm Service Agency

Title: USDA Minority Farm Register.

OMB Control Number: 0560–0231.

Summary of Collection: This information collection is necessary to create a client list for the Farm Service Agency (FSA) and the Department of Agriculture (USDA) program outreach. The collected information is a tool to promote equal access to USDA Farm programs and services for minority farmers and ranchers with agricultural interests. The Register will provide a name and address file of those interested in outreach efforts. The authority for the collection of this information can be found at 7 U.S.C. 2279.

Need and Use of the Information: FSA will collect the name, address, phone number, farm location, race, ethnicity and gender from the Minority Farm Register permission form, AD–2035. FSA manage the register and the Office of Outreach releases names, addresses and phone numbers of individuals to approved outreach organizations requesting lists of individuals with particular racial and ethnic characteristics with their authorizations.

Description of Respondents: Individuals or households.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 4,667.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–22369 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 2, 2010.

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

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

Rural Utilities Service

Title: Weather Radio Transmitter Grant Program.

OMB Control Number: 0572–0124.

Summary of Collection: Under the authorization of Public Law 106–387 (FY 2001 Appropriations Act), made approximately $5 million in grant funds available to facilitate the expansion of the National Oceanic and Atmospheric Administration's (NOAA) Weather Radio and Alert System into rural areas that are not covered or poorly covered. The National Weather Service operates an All Hazards Early Warning System that alerts people in areas covered by its transmissions of approaching dangerous weather and other emergencies. The National Weather Service can typically provide warnings of specific weather dangers up to fifteen minutes prior to the event. At present, many rural areas lack NOAA Weather Radio coverage. The Weather Radio Transmitter Grant Program will provide grant funds for use in rural areas and communities of 50,000 or less inhabitants. The grant funds will be processed on a first-come basis until the appropriation is used in its entirety.

Need and Use of the Information: RUS will use the information from the submission to determine the following: (1) That adequate coverage in the area does not already exist and that the proposed coverage will meet the needs of the community; (2) that design requirements are met; and (3) that the funds needed to complete the project are adequate based on the grant and the matching portion from the applicant.

Description of Respondents: Not for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 38.

Rural Utility Service

Title: Servicing of Water Programs Loans and Grants.

OMB Control Number: 0572–0137.

Summary of Collection: Authority for servicing of Water Programs Loan and Grants is contained in Section 306e of the Consolidated Farm and Rural Development Act, as amended. The information collected covers loan and grant servicing regulations, 7 CFR part 1782, which prescribes policies and responsibilities for servicing actions necessary in connection with Water and Environmental Programs (WEP) loans and grants. WEP provides loans, guaranteed loans and grants for water, sewer, storm water, and solid waste disposal facilities in rural areas and towns of up to 10,000 people.

Need and Use of the Information: The Rural Utilities Service will collect information using various forms. The collected information for the most part is financial in nature and needed by the Agency to determine if borrowers, based on their individual situations, qualify for the various servicing authorities. Servicing actions become necessary due to the development of financial or other problems and may be initiated by either a recipient which recognizes that a problem exists and wished to resolve it, or by the Agency. If a problem exists, a recipient must furnish financial information which is used to aid in resolving the problem through reamortization, sale, transfer, debt restructuring, liquidation, or other means provided in the regulations.

Description of Respondents: Business or other for-profit; non-profit institutions; State and local governments.

Number of Respondents: 493.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 651.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–22368 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Annual Report of State Revenue Matching

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection which concerns the appropriation and use of State funds for the National School Lunch, School Breakfast and Special Milk Programs. This collection is a revision of a currently approved collection.

DATES: Written comments must be received on or before November 8, 2010.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lynn Rodgers-Kuperman, Branch Chief, Program Analysis and Monitoring Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, VA 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Ms. Lynn Rodgers-Kuperman at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 210, National School Lunch Program.

OMB Number: 0584–0075, Form Number FNS–13.

Expiration Date: 1/31/2011.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751 *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771 *et seq.*). Information on school program operations is collected from State agencies on a yearly basis to monitor and make adjustments to State agency funding requirements. As provided in 7 CFR 210.17, each school year, State revenues must be appropriated or used specifically by the State for Federal school lunch program purposes. The amount that must be appropriated or used generally is at least 30% of the funds received by the State under Section 4 of the NSLA (42 U.S.C. 1753) during the school year beginning July 1, 1980, unless exemptions or waivers are met, as described in 7 CFR 210.17. FNS uses form FNS–13 to collect data on State revenue matching to meet the reporting required by 7 CFR 210.17(g). The form is an intrinsic part of the accounting system currently being used by the subject programs to ensure proper reimbursement as well as to facilitate adequate recordkeeping. The FNS–13 form is provided to States through a web-based Federal reporting system and 100 percent of the information is collected through electronic means. The instructions on FNS–13 are being updated and this is a minor change that did not increase the burden hours. The burden hours have not changed.

Affected Public: State agencies.

Estimated Number of Respondents: 57 State agencies.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 57.

Estimated Time per Response: 80 hours.

Estimated Total Annual Burden on Respondents: 4,560 hours.

See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated number of respondents	Responses annually per respondent	Total annual responses (col. b x c)	Estimated average number of hours per response	Estimated total hours (col. d x e)
Reporting Burden:					
State agency	57	1	57	80	4,560
Total Reporting Burden					4,560

Dated: September 1, 2010.

Jeffrey Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2010–22374 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0011]

Availability of an Environmental Assessment for Field Testing Foot-and-Mouth Disease Vaccine, Live Adenovirus Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment (EA) concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed foot-and-mouth disease vaccine, live adenovirus vector. The EA, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the EA and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before October 8, 2010.

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

● *Federal eRulemaking Portal:* Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0011*) to submit or view comments

and to view supporting and related materials available electronically.

● *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS-2010-0011, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0011.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737-1231; phone (301) 734-8245, fax (301) 734-4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, Ames, IA 50010; phone (515) 337-6100, fax (515) 337-7397.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Per-Os USA Inc. under contract with GenVec, Inc.

Product: Foot-and-mouth disease vaccine, live adenovirus vector.

Field Test Locations: Nebraska, Missouri, and Michigan.

The above-mentioned product consists of a live recombinant adenovirus vector expressing certain foot-and-mouth disease virus proteins. The vaccine is for use in cattle at 12 weeks of age or older, as an aid in the prevention of clinical signs of disease caused by foot-and-mouth disease virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151-159.

Done in Washington, DC, this 1st day of September 2010.

Gregory L. Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–22365 Filed 9–7–10: 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–10–0066; NOP–10–07]

Notice of 2010 National Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Funds Availability. Inviting Applications for the National Organic Certification Cost-Share Program.

SUMMARY: This Notice invites all States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico, (collectively hereinafter called States) to submit an Application for Federal Assistance (Standard Form 424), and to enter into a cooperative agreement with the Agricultural Marketing Service (AMS) for the allocation of National Organic Certification Cost-Share Funds. The AMS has allocated $22.0 million for this organic certification cost-share program commencing in Fiscal Year 2008, and these funds will be annually allocated to States through cooperative agreements until exhausted. Funds are available under this program to States interested in providing cost-share assistance to organic producers and handlers certified under the National Organic Program (NOP). States interested in obtaining cost-share funds must submit an Application for Federal Assistance and enter into a cooperative agreement with AMS for allocation of funds.

DATES: Completed applications for Federal assistance along with signed cooperative agreements must be received by September 24, 2010.

ADDRESSES: Applications for Federal assistance and cooperative agreements shall be submitted to: Betsy Rakola, Grants Management Specialist, National Organic Program, USDA/AMS/NOP, Room 2640-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252. Additional information can be found under "Organic Cost Share Program" on the National Organic Program's homepage at *http://www.ams.usda.gov/nop.*

FOR FURTHER INFORMATION CONTACT: Betsy Rakola, Grants Management Specialist, National Organic Program, USDA/AMS/NOP, Room 2646-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION: This National Organic Certification Cost-Share Program is authorized under 7 U.S.C. 6523, as amended by section 10301 of the Food, Conservation and Energy Act of 2008 (Act). The Act authorizes the Department to provide certification cost-share assistance to producers and handlers of organic agricultural products in all States. Beginning in Fiscal Year 2008, the AMS has allocated $22 million for this program to be distributed through cooperative agreements to interested States, until such funding has been exhausted. The Program provides financial assistance to organic producers and handlers certified to the NOP. The NOP is authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

To participate in the program, interested States, through their State Department of Agriculture, must complete an Application for Federal Assistance (Standard Form 424) and enter into a written cooperative agreement with AMS. State Department of Agriculture refers to agencies, commissions, or departments of State government responsible for implementing regulation, policy or programs on agriculture within their State. The program will provide cost-share assistance, through participating States, to organic producers and handlers receiving certification or continuation of certification by a USDA accredited certifying agent commencing October 1, 2010, through September 30, 2011. Under the Act, cost-share assistance payments are limited to 75 percent of an individual producer's or handler's certification costs up to a maximum of $750.00 per year.

To receive cost-share assistance, organic producers and handlers must submit an application to the representative Agency of the State in which their farm/operation is located. This application must include: (1) Proof of NOP certification issued or continued within the cost-share qualifying period, October 1, 2010, through September 30, 2011, and; (2) an itemized invoice demonstrating costs incurred for NOP certification. Costs incurred for non-certification activities, such as, membership associations or farm/operation inputs are not eligible for assistance through this program.

However, for producers in the states of Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming cost-share funding is available to these states, through their State Department of Agriculture, under the Agricultural Management Assistance (AMA) Organic Certification Cost-Share Program authorized under Section 1524 of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501–1524). As provided in a notice of Funds Availability published in the **Federal Register** completed applications for the AMA Federal assistance program, along with signed cooperative agreements must be received by close of business, September 24, 2010. Information on the AMA program can be found under "Organic Cost Share Program" on the NOP's homepage at *http://www.ams.usda.gov/nop.*

How to Submit Applications: To receive fund allocations to provide cost-share assistance, a State Department of Agriculture must complete an Application for Federal Assistance (Standard Form 424), and enter into a written cooperative agreement with AMS. AMS encourages interested States to submit the Application for Federal Assistance (Standard Form 424), electronically via Grants.gov, the Federal grants Web site, *http://www.grants.gov.* Applications submitted electronically via Grants.gov must be filed by September 24, 2010. A hardcopy of Standard Form 424 bearing an original signature is not required when applying through *http://www.grants.gov.* However, the cooperative agreement must have the original signature of the official who has authority to apply for Federal assistance. The signed cooperative agreement must be sent by express mail or courier service and received at the above address by September 24, 2010. States considering submitting electronic application forms should become familiar with the Grants.gov Web site and begin the application process well in advance of the application deadline. For information on how to apply electronically, please consult *http://www.grants.gov/GetRegistered.*

State Agencies submitting hard copy applications should submit a signed copy of Standard Form 424 and a signed copy of the cooperative agreement the application package to AMS at the address listed above. The Standard Form 424 and the cooperative agreement must have the original signature of the official who has authority to apply for Federal assistance. Hard copy applications should be sent only via express mail or courier service and must be received at the above address by September 24, 2010.

The National Organic Certification Cost-share Program is listed in the "Catalog of Federal Domestic Assistance" under number 10.163 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally-assisted programs. Additional information on the National Organic Certification Cost-share Program can be found under "Organic Cost Share Program" on the NOP's homepage at *http://www.ams.usda.gov/nop.*

Authority: 7 U.S.C. 6523.

Dated: September 1, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–22243 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–10–0065; NOP–10–06]

Notice of Agricultural Management Assistance Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Funds Availability. Inviting Applications for the Agricultural Management Assistance Organic Certification Cost-Share Program.

SUMMARY: This Notice invites the following eligible States: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming, to submit an Application for Federal Assistance (Standard Form 424), and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the Allocation of Organic Certification Cost-Share Funds. The AMS has allocated $1.495 million for this organic certification cost-share program in Fiscal Year 2010. Funds are available under this program to 16 designated States to provide cost-share assistance to organic crop and livestock producers certified under the National Organic Program (NOP). Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal

Assistance, and enter into a cooperative agreement with AMS for allocation of funds.

DATES: Completed applications for Federal assistance along with signed cooperative agreements must be received by close of business, September 24, 2010.

ADDRESSES: Applications for Federal assistance and cooperative agreements shall be submitted to: Betsy Rakola, Grants Management Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 2640–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252. Additional information can be found under "Organic Cost Share Program" on the National Organic Program's homepage at *http://www.ams.usda.gov/nop.*

FOR FURTHER INFORMATION CONTACT: Betsy Rakola, Grants Management Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 2640–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance (AMA) Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1524). Under the applicable FCIA provisions, the Department is authorized to provide cost-share assistance to organic producers in the States of Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The AMS has allocated $1.495 million for this organic certification cost-share program in Fiscal Year 2010. This organic certification cost-share program provides financial assistance to organic producers certified to the NOP authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*). This program is in addition to and separate from the National Organic Certification Cost-Share Program which is also administered by AMS and is open to all States and U.S. Territories.

To participate in the program, eligible States, through their State Department of Agriculture, must complete an Application for Federal Assistance (Standard Form 424) and enter into a written cooperative agreement with AMS. State Department of Agriculture refers to agencies, commissions, or departments of State government responsible for implementing regulation, policy or programs on agriculture within their State. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or continuation of certification by a USDA accredited certifying agent commencing October 1, 2010, through September 30, 2011. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $750.00.

To receive cost-share assistance, organic producers must submit an application to the representative Agency of the State in which their farm/operation is located. This application must include: (1) Proof of NOP certification issued or continued within the cost-share qualifying period, October 1, 2010, through September 30, 2011, and (2) an itemized invoice demonstrating costs incurred for NOP certification. Costs incurred for non-certification activities, such as, membership associations or farm/operation inputs are not eligible for assistance through this program. Assistance provided to eligible producers under this cost-share program is included under the Agricultural Management Assistance (AMA) Program. Total amount of cost-share payments provided to any eligible producer under all AMA programs cannot exceed $50,000.

How To Submit Applications: To receive fund allocations to provide cost-share assistance, a State Department of Agriculture must complete an Application for Federal Assistance (Standard Form 424), and enter into a written cooperative agreement with AMS. AMS encourages interested States to submit the Application for Federal Assistance, (Standard Form 424) electronically via Grants.gov, the Federal grants Web site, *http://www.grants.gov.* Applications submitted electronically via Grants.gov must be filed by September 24, 2010. A hardcopy of Standard Form 424 bearing an original signature is not required when applying through *http://www.grants.gov.* However, the cooperative agreement must have the original signature of the official who has authority to apply for Federal assistance. The signed cooperative agreement must be sent by express mail or courier service and received at the above address by September 24, 2010. States considering submitting electronic application forms should become familiar with the Grants.Gov Web site and begin the application process well in advance of the application deadline. For information on how to apply electronically, please consult *http://www.grants.gov/GetRegistered.*

State Agencies submitting hard copy applications should submit a signed copy of Standard Form 424 and a signed copy of the cooperative agreement to AMS at the address listed above. The Standard Form 424 and the cooperative agreement must have the original signature of the official who has authority to apply for Federal assistance. Hard copy applications should be sent only via express mail or courier service and must be received at the above address by September 24, 2010.

The AMA Organic Certification Cost-Share Program is listed in the "Catalog of Federal Domestic Assistance" under number 10.163 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs. Additional information on the AMA Organic Certification Cost-Share Program can be found under "Organic Cost Share Program" on the NOP's homepage at *http://www.ams.usda.gov/nop.*

Authority: 7 U.S.C. 1524.

Dated: September 1, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–22244 Filed 9–7–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0076]

Pale Cyst Nematode; Update of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of changes to quarantined area.

SUMMARY: We are advising the public that we have made changes to the area in the State of Idaho that is quarantined to prevent the spread of pale cyst nematode. The description of the quarantined area was updated on April 26, 2010. As a result of these changes, 209 acres have been removed from the quarantined area.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Program Manager, Emergency and Domestic Programs, PPQ, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734-5038.

SUPPLEMENTARY INFORMATION:

Background

The pale cyst nematode (PCN, *Globodera pallida*) is a major pest of potato crops in cool-temperature areas. Other solanaceous hosts include tomatoes, eggplants, peppers, tomatillos, and some weeds. The PCN is thought to have originated in Peru and is now widely distributed in many potato-growing regions of the world. PCN infestations may be expressed as patches of poor growth. Affected potato plants may exhibit yellowing, wilting, or death of foliage. Even with only minor symptoms on the foliage, potato tuber size can be affected. Unmanaged infestations can cause potato yield loss ranging from 20 to 70 percent. The spread of this pest in the United States could result in a loss of domestic or foreign markets for U.S. potatoes and other commodities.

In 7 CFR part 301, the PCN quarantine regulations (§§ 301.86 through 301.86-9, referred to below as the regulations) set out procedures for determining the areas quarantined for PCN and impose restrictions on the interstate movement of regulated articles from quarantined areas.

Section 301.86-3 of the regulations sets out the procedures for determining the areas quarantined for PCN. Paragraph (a) of § 301.86-3 states that, in accordance with the criteria listed in § 301.86-3(c), the Administrator will designate as a quarantined area each field that has been found to be infested with PCN, each field that has been found to be associated with an infested field, and any area that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from infested or associated fields.

Paragraph (d) provides for the removal of fields from quarantine. An infested field will be removed from quarantine when a protocol approved by the Administrator as sufficient to support the removal of infested fields from quarantine has been completed and the field has been found to be free of PCN. An associated field will be removed from quarantine when the field has been found to be free of PCN according to a protocol approved by the Administrator as sufficient to support removal of associated fields from quarantine. Any area other than infested or associated fields that has been quarantined by the Administrator because of its inseparability for quarantine enforcement purposes from infested or associated fields will be removed from quarantine when the relevant infested or associated fields are removed from quarantine.

Paragraph (a) of § 301.86-3 further provides that the Administrator will publish a description of the quarantined area on the Plant Protection and Quarantine (PPQ) Web site, (*http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml*). The description of the quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. Finally, paragraph (a) establishes that, after a change is made to the quarantined area, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

Therefore, we are publishing this notice to inform the public of changes to the PCN quarantined area in the State of Idaho. The changes are as follows:

- On April 26, 2010, we updated the quarantined area to remove 149.56 acres from Bingham County and 59.48 acres from Bonneville County.

This acreage consisted of associated fields that were found to be free of PCN according to a survey protocol approved by the Administrator in accordance with § 301.86-3 as sufficient to support removal of associated fields from quarantine.

The current map of the quarantined area can be viewed on the PPQ Web site at (*http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml*).

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

Done in Washington, DC, this 1st day of September 2010.

Gregory Parham,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–22364 Filed 9–7–10: 8:45 am]

BILLING CODE 3410–34–S

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that a briefing before the Hawaii Advisory Committee (Committee) will convene on Monday, September 20, 2010. The meeting will convene at 10:30 a.m. and adjourn at approximately 4 p.m. The meeting will be held at the Liliha Public Library, 1515 Liliha Street, Honolulu, HI. The purpose of the briefing is for the Committee to learn about possible disparities in the administration of justice.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 30, 2010. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA, 90012. They may also be faxed to the Commission at (213) 894–0507 or e-mailed to the Commission at *atrevino@usccr.gov.* Persons who desire additional information may contact the Western Regional Office at (213) 894–3437.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Western Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 2, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–22283 Filed 9–7–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2010]

Foreign-Trade Zone 272—Lehigh Valley, Pennsylvania, Application for Subzone, Piramal Critical Care, Inc. (Inhalation Anesthetics Manufacturing and Distribution), Bethlehem, Pennsylvania

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Lehigh Valley Economic

Development Corporation (LVEDC), grantee of FTZ 272, requesting special–purpose subzone status for the inhalation anesthetics manufacturing facilities of Piramal Critical Care, Inc. (Piramal), located in Bethlehem, Pennsylvania. 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 August 31, 2010.

The Piramal facilities (95 employees, 445 metric ton capacity) consist of 2 sites on 4.3 acres: *Site 1* (4.0 acres) is located at 3950 Sheldon Circle, Bethlehem; and *Site 2* (0.3 acres) is located at 2550 Brodhead Road, Bethlehem. The facilities are used for the manufacture and distribution of inhalation anesthetics Sevoflurane and Isoflurane. Components and materials sourced from abroad (representing 23% of the value of the finished product) include: Hexafluoroisopropyl Methyl Ether (HFMOP) and Trifluoroethanol (TFE) (duty rate of 5.5%). The application also requests authority to include a limited secondary scope of inputs and finished pharmaceutical products that Piramal may produce under FTZ procedures in the future. New major activity involving these inputs/products would require review by the FTZ Board.

FTZ procedures could exempt Piramal from customs duty payments on the foreign components used in export production. The company anticipates that some 40 percent of the plant's shipments will be exported. On its domestic sales, Piramal would be able to choose the duty rates during customs entry procedures that apply to Sevoflurane and Isoflurane (duty free) for the foreign inputs noted above. FTZ designation would further allow Piramal to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Maureen Hinman 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 November 8, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 22, 2010.

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 website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: August 31, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–22377 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the International Trade Administration's final determination of Light-Walled Rectangular Pipe and Tube from Mexico (Secretariat File No. USA–MEX–2008–1904–03).

SUMMARY: Pursuant to the Memorandum Opinion and Order of the Binational Panel dated July 20, 2010, affirming the determination described above, the panel review was completed on September 2, 2010.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On July 20, 2010, the Binational Panel issued a Memorandum Opinion and Order affirming the International Trade Administration's final determination concerning Light-Walled Rectangular Pipe and Tube from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists were discharged from their duties effective

Dated: September 2, 2010.

Valerie Dees,

United States Secretary, AFTA Secretariat.

[FR Doc. 2010–22371 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 100818343–0343–02]

Effectiveness of Licensing Procedures for Agricultural Commodities to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is requesting public comments on the effectiveness of its licensing procedures as defined in the Export Administration Regulations for the export of agricultural commodities to Cuba. BIS will include a description of these comments in its biennial report to the Congress, as required by the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7201 *et seq.*), as amended.

DATES: Comments must be received by October 8, 2010.

ADDRESSES: Written comments may be sent by e-mail to *publiccomments@bis.doc.gov* with a reference to "TSRA 2010 Report" in the subject line. Written comments may be submitted by mail to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, Washington, DC 20230 with a reference to "TSRA 2010 Report."

FOR FURTHER INFORMATION CONTACT: Alan W. Christian, Office of Nonproliferation and Treaty Compliance, Telephone: (202) 482–4252. Additional information on BIS procedures and our previous biennial report under the Trade Sanctions Reform and Export Enhancement Act, as amended, is available at *http://www.bis.doc.gov/licensing/TSRA_TOC.html.* Copies of these materials may also be requested by contacting the Office of Nonproliferation and Treaty Compliance.

SUPPLEMENTARY INFORMATION: Pursuant to section 906(a) of the Trade Sanctions

Reform and Export Enhancement Act of 2000 (TSRA) (22 U.S.C. 7205(a)), the Bureau of Industry and Security (BIS) authorizes exports of agricultural commodities, as defined in part 772 of the Export Administration Regulations (EAR), to Cuba. Requirements and procedures associated with such authorization are set forth in section 740.18 of the EAR (15 CFR 740.18). These are the only licensing procedures in the EAR currently in effect pursuant to the requirements of section 906(a) of TSRA.

Under the provisions of section 906(c) of TSRA (22 U.S.C. 7205(c)), BIS must submit a biennial report to the Congress on the operation of the licensing system implemented pursuant to section 906(a) for the preceding two-year period. This report must include the number and types of licenses applied for, the number and types of licenses approved, the average amount of time elapsed from the date of filing of a license application until the date of its approval, the extent to which the licensing procedures were effectively implemented, and a description of comments received from interested parties during a 30-day public comment period about the effectiveness of the licensing procedures. BIS is currently preparing a biennial report on the operation of the licensing system for the two-year period from October 1, 2008 through September 30, 2010.

Request for Comments

By this notice, BIS requests public comments on the effectiveness of the licensing procedures for the export of agricultural commodities to Cuba set forth under section 740.18 of the EAR. Parties submitting comments are asked to be as specific as possible. All comments received by the close of the comment period will be considered by BIS in developing the report to Congress.

All comments must be in writing and will be available for public inspection and copying. Any information that the commenter does not wish to be made available to the public should not be submitted to BIS.

Dated: August 30, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–21953 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–503, A–122–503, A–570–502]

Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On May 3, 2010, the Department of Commerce (the Department) initiated the third sunset reviews of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and the People's Republic of China (PRC), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year ("Sunset") Review*, 75 FR 23240 (May 3, 2010) (*Notice of Initiation*). The Department has conducted expedited (120-day) sunset reviews of these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping as indicated in the "Final Results of Reviews" section of this notice.

EFFECTIVE DATE: September 8, 2010.

FOR FURTHER INFORMATION: Dustin Ross or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0747 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2010, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders[1] on certain iron construction castings from Brazil, Canada, and the PRC pursuant to section 751(c) of the Act. See *Notice of Initiation.*

The Department received notices of intent to participate in these sunset reviews from the domestic interested parties, East Jordan Iron Works, Inc., Neenah Foundry Company, and U.S. Foundry & Manufacturing Co. (collectively, the petitioners) within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested–party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

The Department received complete substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and the PRC.

Scope of the Orders

Brazil

The merchandise covered by the order consists of certain iron construction castings from Brazil, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item number 7325.10.0010; and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item number 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes only. The written product description remains dispositive.

Canada

The merchandise covered by the order consists of certain iron construction castings from Canada, limited to manhole covers, rings,and frames, catch basin grates and frames, clean–out covers, and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under HTS item number 7325.10.0010. The HTS item number is provided for convenience and customs purposes only. The written product description remains dispositive.

PRC

The products covered by the order are certain iron construction castings from the PRC, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and drains used for drainage or access purposes for public utilities, water and sanitary

[1] *Antidumping Duty Order; Certain Iron Construction Castings From Canada*, 51 FR 7600 (March 5, 1986), *Antidumping Duty Order; Iron Construction Castings From Brazil*, 51 FR 17220 (May 9, 1986), and *Antidumping Duty Order; Iron Construction Castings From the People's Republic of China (the PRC)*, 51 FR 17222 (May 9, 1986).

systems; and valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. This merchandise is currently classifiable under the HTS item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China" from Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations Edward C. Yang to Deputy Assistant Secretary for Import Administration Ronald K. Lorentzen dated concurrently with this notice (Issues and Decision Memo), which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department of Commerce building.

In addition, a complete version of the Issues and Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Issues and Decision Memo are identical in content.

Final Results of Reviews

The Department determines that revocation of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Country	Company	Weighted–Average Margin (Percent)
Brazil	Fundicao Aldebara Ltda.	58.74
	Sociedade de Metalurgia E Processos, Ltda.	16.61
	Usina Siderurgica Paraensa S.A.	5.95
	All other manufacturers/producers/exporters	26.16
Canada	Mueller Canada, Inc.	9.80
	LaPerle Foundry, Ltd.	4.40
	Bibby Ste. Croix Foundries, Ltd.	8.60
	All Others	7.50
PRC	PRC–wide Rate	25.52

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: August 31, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–22373 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–504]

Final Results of Expedited Sunset Review: Heavy Iron Construction Castings from Brazil

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

SUMMARY: On May 3, 2010, the Department of Commerce ("the Department") initiated the third sunset review of the countervailing duty order ("CVD") on heavy iron construction castings from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited sunset review of the CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett or David Goldberger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4161 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2010, the Department initiated the third sunset review of the CVD order on iron construction castings from Brazil pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 75 FR 23240 (May 3, 2010). The Department received a notice of intent to participate from the following domestic interested parties: East Jordan Iron Works, Inc., Neenah Foundry Company, and U.S. Foundry & Manufacturing Co. (collectively, "domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as domestic producers engaged

in the production of subject merchandise in the United States.

The Department received an adequate substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the CVD order.

Scope of the Order

The merchandise subject to the CVD order consists of certain heavy iron construction castings from Brazil. The merchandise is defined as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item number 7325.10.00.

The HTS item number subject to the CVD order is provided for convenience and customs purposes. The written product description remains dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated August 31, 2010, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B–1117 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the following weighted–average percentage margins:

Manufacturers/ Exporters/Producers	Weighted-Average Margin (Percent)
Country–wide rate	1.06

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 31, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–22375 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY81

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); South Atlantic Red Snapper

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

ACTION: Notice of SEDAR 24 Assessment Stage 2, Webinar 3.

SUMMARY: The SEDAR assessment of the South Atlantic stock of red snapper will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. This is the twenty-fourth SEDAR. This is notice of the third Assessment Webinar Stage 2 webinar for SEDAR 24.

DATES: Assessment Stage 2 Webinar 3 will take place September 24, 2010. See **SUPPLEMENTARY INFORMATION** for agenda information.

ADDRESSES: The Assessment Webinars will be held live online via an internet based conferencing service. The Webinars may be attended by the public. Those interested in participating should contact Kari Fenske at SEDAR. See **FOR FURTHER INFORMATION CONTACT** to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Kari Fenske, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; (843) 571–4366; *kari.fenske@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes a Data Workshop, a Stock Assessment Process and a Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Peer Review Evaluation Report documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops and Assessment Process are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils; the Atlantic and Gulf States Marine Fisheries Commissions; and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 24 Assessment Stage 2, Webinar 3 Schedule

September 24, 2010: 1 pm–5 pm

Assessment panelists will review and finalize the assessment report.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 2 business days prior to each workshop.

Dated: September 2, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–22305 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW44

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops; Correction

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

ACTION: Notice of public workshops; correction.

SUMMARY: Due to the approach of Hurricane Earl, NMFS is cancelling the Atlantic Shark Identification workshop that was scheduled for September 2, 2010, in Wilmington, NC. This workshop was announced on May 28, 2010. NMFS has rescheduled the workshop for September 9, 2010, to be held at the same time and location, 9 a.m. to 5 p.m., Comfort Inn (UNC Wilmington), 151 South College Road, Wilmington, NC 28403.

DATES: The Atlantic Shark Identification Workshop scheduled for September 2, 2010, in Wilmington, NC, has been rescheduled for September 9, 2010. See SUPPLEMENTARY INFORMATION for further details.

ADDRESSES: The location of the rescheduled workshop has not changed. See SUPPLEMENTARY INFORMATION for further details.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson of the Highly Migratory Species Management Division at (727) 824-5399.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the **Federal Register** of May 28, 2010, in FR Doc. 2010–12919, on page 29992, in the second column, correct the location of the third Atlantic Shark Identification workshop listed under the heading "Workshop Dates, Times, and Locations" to read:

Workshop Dates, Times, and Locations

3. September 9, 2010, from 9 a.m. - 5 p.m., Comfort Inn (UNC-Wilmington), 151 South College Road, Wilmington, NC 28403.

Background

This workshop is being rescheduled due to the approach of Hurricane Earl.

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items to the workshop:

Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Dated: September 2, 2010.

Carrie Selberg,

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

[FR Doc. 2010–22355 Filed 9–2–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Cut and Sew Men's and Boys' Worsted Wool Suits, Suit-Type Jackets and Trousers in the United States

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2011 tariff rate quotas on certain worsted wool fabric to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States for an allocation of the 2011 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 8, 2010. The Department will cause to be published in the **Federal Register** its determination to allocate the 2011 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 8, 2010.

ADDRESSES: Applications must be submitted to Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230 (telephone: (202) 482–3400). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp*.

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2573.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108–429, by increasing the TRQ for worsted wool fabric with average fiber diameters greater than 18.5 microns, HTS 9902.51.11, to an annual total level of 5.5 million square meters, and extending it through 2007, and increasing the TRQ for average fiber diameters of 18.5 microns or less, HTS 9902.51.15 (previously 9902.51.12), to an annual total level of 5 million square meters and extending it through 2006. On August 17, 2006 the Act was further

amended pursuant to the Pension Protection Act of 2006, Public Law 109–280, which extended both TRQs, 9902.51.11 and 9902.51.15, through 2009. The Emergency Economic Stabilization Act of 2008 extended the TRQ for both HTS through 2014.

The Act requires that the TRQs be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. *See* 70 FR 61363; 19 CFR part 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp* to the address listed above by 5 p.m. on October 8, 2010 in compliance with the requirements of 15 CFR 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: September 1, 2010.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2010–22382 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Weave Such Fabrics in the United States

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2011 tariff rate quotas on certain worsted wool fabric to persons who weave such fabrics in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who weave worsted wool fabrics in the United States for an allocation of the 2011 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 8, 2010. The Department will cause to be published in the **Federal Register** its determination to allocate the 2011 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 8, 2010.

ADDRESSES: Applications must be submitted to the Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230 (telephone: (202) 482–3400). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp/fabric.*

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2573.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108–429. The 2004 amendment included authority for the Department to allocate a TRQ for new HTS category, HTS 9902.51.16. This HTS category refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment provided that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave such worsted wool fabric in the United States that is suitable for making men's and boys' suits. The TRQ for HTS 9902.51.16 provided for temporary reductions in the import duties on 2,000,000 square meters annually for 2005 and 2006. The amendment requires that the TRQ be allocated to persons who weave worsted wool fabric with average fiber diameter of 18.5 microns or less, which is suitable for use in making men's and boys' suits, in the United States. On August 17, 2006, the Act was further amended pursuant to the Pension Protection Act of 2006, Public Law 109–280, which extended the TRQ for HTS 9902.51.16 through 2009. The Emergency Economic Stabilization Act of 2008 extended the TRQ for HTS 9902.51.16 through 2014.

On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. *See* 70 FR 61363; 19 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp/fabric* to the address listed above by 5 p.m. on October 8, 2010 in compliance with the requirements of 15 CFR part 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: September 1, 2010.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2010–22378 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY18

Takes of Marine Mammals Incidental to Specified Activities; Construction of the Knik Arm Crossing, Alaska

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Knik Arm Bridge Toll Authority (KABATA), in coordination with the Department of Transportation Federal Highways Administration (FHWA), for authorization to take marine mammals incidental to construction of a bridge across Knik Arm, named the Knik Arm Crossing, Alaska, over the course of five construction seasons; approximately spring 2013 through autumn 2017. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the KABATA's application and request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the KABATA's application and

request. NMFS has reviewed KABATA's request, including the information in its application, and determined that it is adequate and complete in accordance with 50 CFR 216.104(b)(1).

DATES: Comments and information must be received no later than October 8, 2010.

ADDRESSES: Comments on the application should be addressed 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 20910–3225. The mailbox address for providing email comments is *PR1.0648–XY18@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289, ext. 151.

SUPPLEMENTARY INFORMATION:

Availability

A copy of KABATA's application and request may be obtained by writing to the address specified above (see **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.≥

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On August 20, 2010, NMFS received a complete application from KABATA and FHWA requesting authorization to take of three species of marine mammals incidental to construction of a bridge, the Knik Arm Crossing (KAC), in Upper Cook Inlet, Alaska. The proposed construction is anticipated to take four construction seasons (approximately April-November, annually); however, given unforeseen construction delays, KABATA has requested regulations to be effective for the period of five seasons from 2013 through 2017. Marine mammals, particularly Cook Inlet beluga whales (Delphinapterus leucas), would be potentially exposed to various construction-related operations, including noise from pile driving, and the presence of constructed-related vessels. Because construction of the KAC has the potential to result in the incidental take marine mammals present within the action area, KABATA requests authorization to take, by Level B harassment, Cook Inlet beluga whales, harbor seals (Phoca vitulina), harbor porpoise (Phocoena phocoena). KABATA has not requested authorization for incidental take by injury (Level A harassment), serious injury or mortality.

Specified Activities

KABATA is proposing to construct a new bridge spanning Knik Arm and develop approaches on the Matanuska-Susistna Borough (Mat-Su) side of Knik Arm and the Municipality of Anchorage to connect the KAC to existing transportation infrastructure. In summary, the KAC would connect the Mat-Su approach to the Anchorage approach by way of an 8,200–foot (2.5 km) long, pier supported bridge. The bridge design calls for 29 permanent piers for the substructure, each consisting of four permanent, large diameter drilled shafts. The drilled shafts would be connected to the bridge superstructure columns through use of concrete footings. In addition, KABATA intends to install temporary moorage and temporary construction docks within Knik Arm waters and develop land-based approaches on both sides of the Arm that will run adjacent to the water's edge to varying degrees. A full description of the activities proposed by KABATA is described in the application.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning KABATA's request (see **ADDRESSES**). All information, suggestions, and comments related to KABATA's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by KABATA in Knik Arm, Alaska, will be considered by NMFS in developing, if appropriate, regulations governing the issuance of letters of authorization.

Dated: September 1, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–22391 Filed 9–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE)

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 23, 2010, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments

- Federal Coordinator's Comments
- Liaisons' Comments
- Administrative Issues
- Presentations
- Subcommittee Chairs' Comments
- Public Comments
- Final Comments
- Adjourn

Breaks taken as appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC on September 1, 2010.

Clara R. Barley,

Department of Energy Federal Register Liaison Officer.

[FR Doc. 2010–22278 Filed 9–7–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13716–000]

Lower South Fork LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

August 31, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 13716–000.

c. *Date filed:* April 19, 2010 and supplemented July 28, 2010.

d. *Applicant:* Lower South Fork LLC.

e. *Name of Project:* Lower South Fork Irrigation Project.

f. *Location:* The project is located in Carbon County, Montana. There are no political subdivisions of more than 5,000 people within 15 miles of the project area.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Roger Kirk, Benjamin J Singer, 521 E Peach Suite 2B, Bozeman, MT 59715, (406) 587–5086.

i. *FERC Contact:* Anthony DeLuca, (202) 502–6632, *Anthony.deluca@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size and location of the proposed project in a closed system, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.43(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to October 1, 2010.

All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *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. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Lower South Fork LLC requests Commission approval for exemption for a small conduit hydroelectric facility. This proposal consists of adding a Pelton style 470 kilowatt hydraulic turbine/generator into an existing 32 inch PVC pipeline used to carry water from one ditch to another within an irrigation system. The primary purpose of the conduit is agricultural use. The hydraulic capacity of the generator will be 27.5 cubic feet per second and the generator will have an estimated average annual generation of 1,800,000 kWh.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, P–13716, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests

filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original plus seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22273 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 31, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–64–000.

Applicants: Baldwin Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Baldwin Wind, LLC.

Filed Date: 08/31/2010.

Accession Number: 20100831–5076.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

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

Docket Numbers: ER96–1947–029; ER10–450–003; ER07–1000–008; ER00–3696–015.

Applicants: Las Vegas Power Company, LLC, Griffith Energy LLC, LS Power Marketing, LLC, Arlington Valley, LLC.

Description: Supplement to Updated Market Power Analysis of LS Power Marketing, LLC, *et. al.*

Filed Date: 08/30/2010.

Accession Number: 20100830–5188.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2042–001; ER10–1947–001; ER10–1942–001; ER10–1941–001; ER10–1938–001; ER10–1888–001; ER10–1885–001; ER10–1883–001; ER10–1878–001; ER10–1864–001; ER10–1862–001; ER10–1865–001; ER10–1873–001; ER10–1875–001; ER10–1884–001; ER10–1876–001.

Applicants: Calpine Energy Services, L.P., South Point Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Otay Mesa Energy Center, LLC, Calpine Power America—CA, LLC, Pastoria Energy Center, LLC, Metcalf Energy Center, LLC, Los Medanos Energy Center LLC, Los Esteros Critical Energy Facility LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Creed Energy Center, LLC, Calpine Gilroy Cogen, L.P., Power Contract Financing, L.L.C., Calpine Construction Finance Co., L.P.

Description: Supplement to Updated Market Power Analysis of Calpine Corporation under ER10–2042, *et al.*

Filed Date: 08/30/2010.

Accession Number: 20100830–5186.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2459–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator submits tariff filing per 35: Resubmittal of NYISO August 16, 2010 Compliance Filing to be effective 8/16/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5155.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2460–000.

Applicants: Canandaigua Power Partners, LLC.

Description: Canandaigua Power Partners, LLC submits tariff filing per 35.12: Canandaigua Power Partners MBR Baseline to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5159.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2461–000.

Applicants: Canandaigua Power Partners II, LLC.

Description: Canandaigua Power Partners II, LLC submits tariff filing per 35.12: Canandaigua Power Partners II MBR Baseline to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5160.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2462–000.

Applicants: Evergreen Wind Power V, LLC.

Description: Evergreen Wind Power V, LLC submits tariff filing per 35.12: Evergreen Wind Power V MBR Baseline to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5161.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2463–000.

Applicants: Evergreen Wind Power, LLC.

Description: Evergreen Wind Power, LLC submits tariff filing per 35.12: Evergreen Wind Power MBR Baseline to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5162.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2464–000.

Applicants: First Wind Energy Marketing, LLC.

Description: First Wind Energy Marketing, LLC submits tariff filing per 35.12: First Wind Energy Marketing MBR Baseline to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5163.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2465–000.

Applicants: Milford Wind Corridor Phase I, LLC.

Description: Milford Wind Corridor Phase I, LLC submits tariff filing per 35.12: Milford Wind Corridor Phase I MBR Baseline to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5164.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2466–000.

Applicants: Stetson Wind II, LLC.
Description: Stetson Wind II, LLC submits tariff filing per 35.12: Stetson Wind II MBR to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5167.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2467–000.
Applicants: Hoosier Wind Project, LLC.
Description: Hoosier Wind Project, LLC submits tariff filing per 35.12: Hoosier Wind Project LLC Market-Based Rate Tariff Baseline Filing to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5171.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2468–000.
Applicants: Fowler Ridge Wind Farm LLC.
Description: Fowler Ridge Wind Farm LLC submits tariff filing per 35.12: Baseline to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5172.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2469–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service, to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2470–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service, to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5003.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2471–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service, to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5004.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2472–000.
Applicants: Black Hills Wyoming, LLC.
Description: Black Hills Wyoming, LLC submits a baseline tariff filing of its market-based rate wholesale power sales tariff, to be effective 9/2/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5006.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2473–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: Cheyenne Light, Fuel and Power Company submits the Baseline filing of its market-based rate wholesale power sales tariff, to be effective 9/2/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5007.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2474–000.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Company submits the Baseline Electronic Tariff Filing of FERC Electric Tariff, Volume No. 7, to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5008.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2475–000.
Applicants: Nevada Power Company.
Description: Nevada Power Company submits the Baseline Electronic Tariff Filing of FERC Electric Tariff, Volume No. 11, to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5009.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2476–000.
Applicants: BG Energy Merchants, LLC.
Description: BG Energy Merchants, LLC submits tariff filing per 35.12: BG Energy Merchants—FERC Electric Tariff to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5022.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2477–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc submits the Forward Capacity Auction Results Filing.
Filed Date: 08/30/2010.
Accession Number: 20100831–0201.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2478–000.
Applicants: Infinite Energy, Inc.
Description: Infinite Energy, Inc. submits tariff filing per 35.12: Infinite Energy, Inc. Market-Based Rate Tariff to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5030.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2479–000.
Applicants: South Carolina Electric & Gas Transmission.
Description: South Carolina Electric & Gas Transmission submits tariff filing per 35.12: Refile Tariff (Baseline Filing) to be effective 8/30/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5031.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2480–000.
Applicants: Berkshire Power Company, LLC.
Description: Berkshire Power Company, LLC submits tariff filing per 35.12: Berkshire Power Company, LLC FERC Electric Rate Schedule No. 1 to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5043.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2481–000.
Applicants: Ingenco Wholesale Power, LLC.
Description: Ingenco Wholesale Power, LLC submits tariff filing per 35.12: Baseline eTariff Filing to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5045.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2482–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2045 Westar Energy NITSA and NOA to be effective 8/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2483–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2014R1 City of Lindsborg, KS NITSA and NOA to be effective 8/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5058.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2484–000.

Applicants: Fitchburg Gas and Electric Light Company.

Description: Fitchburg Gas and Electric Light Company submits tariff filing per 35.12: FGE Market Based Rate Baseline Tariff to be effective 8/30/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5061.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2485–000.

Applicants: Unitil Energy Systems, Inc.

Description: Unitil Energy Systems, Inc. submits tariff filing per 35.12: UES Market Based Rate Baseline Tariff to be effective 8/30/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5065.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2486–000.

Applicants: Unitil Energy Systems, Inc.

Description: Unitil Energy Systems, Inc. submits tariff filing per 35.12: UES Transmission Tariff Baseline Filing to be effective 8/30/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5066.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2487–000.

Applicants: Pacific Summit Energy LLC.

Description: Pacific Summit Energy LLC submits tariff filing per 35.12: Pacific Summit Energy LLC Baseline Tariff to be effective 8/31/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5072.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2488–000.

Applicants: Oasis Power Partners, LLC.

Description: Oasis Power Partners, LLC submits tariff filing per 35.12: Oasis Power Partners LLC Market-Based Rate Tariff Baseline Filing to be effective 8/31/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5074.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2489–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1148R12 American Electric Power Service Corp. NITSA and NOA to be effective 8/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5105.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

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

Docket Numbers: ES09–31–003.

Applicants: Entergy Texas, Inc.

Description: Entergy Texas, Inc. submits supplemental information to their application filed on July 29, 2010 requesting an amendment to its existing authorization to issue long-term debt.

Filed Date: 08/30/2010.

Accession Number: 20100830–5116.

Comment Date: 5 p.m. Eastern Time on Thursday, September 09, 2010.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF10–630–000.

Applicants: Heritage Hospital.

Description: Self-Certification of QF by PowerSecure Inc. for Heritage Hospital in Tarboro, NC.

Filed Date: 08/27/2010.

Accession Number: 20100827–5024.

Comment Date: Not Applicable.

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

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

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

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

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22266 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 25, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1091–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: Non-conforming Service Agreement 910790, to be effective 9/1/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5050.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1092–000.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Company submits Annual Charge Adjustment for the period of October 1, 2010 through September 30, 2011.

Filed Date: 08/23/2010.
Accession Number: 20100824–0204.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1093–000.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Pipe Line LLC submits Annual Charge Adjustment for the period of October 1, 2010 through September 30, 2011.
Filed Date: 08/23/2010.
Accession Number: 20100824–0205.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1094–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Update Cross-Reference to be effective 9/23/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5018.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1095–000.
Applicants: Southwest Gas Storage Company
Description: Southwest Gas Storage Company submits tariff filing per 154.203: Baseline Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5021.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1096–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Sea Robin Pipeline Company, LLC submits tariff filing per 154.203: Baseline Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5030.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1097–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits tariff filing per 154.203: East Tennessee Baseline Filing to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5024.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1098–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline LLC submits tariff filing per 154.203: MoGas Pipeline LLC Baseline Tariff to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5041.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1099–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Agent for Multiple Shippers to be effective 9/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5044.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

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

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

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

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–22261 Filed 9–7–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

August 30, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1043–001.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Company submits tariff filing per 154.205(b): Miscellaneous Filing to be effective 10/1/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5071.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 8, 2010.

Docket Numbers: RP10–1089–002.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.203: Correction Compliance Filing to be effective 9/30/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5089.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 8, 2010.

Docket Numbers: RP10–988–001.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.203: Compliance filing for records 405 and 720 to be effective 7/22/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5130.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 8, 2010.

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 online 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22265 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings 2

August 27, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1072–001.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits tariff filing per 154.205(b): Amendment to Contract 310527–R1 Filing to be effective 8/1/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5062.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1089–001.

Applicants: Cheniere Creole Trail Pipeline, L.P.

Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.203: Cheniere Creole Trail Pipeline Baseline Tariff to be effective 9/30/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5124.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–978–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.203: Compliance Filing to be effective 8/18/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5061.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1087–001.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.203: Correction to Baseline to be effective 8/19/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5153.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–651–001.

Applicants: Elba Express Company, L.L.C.

Description: Elba Express Company, L.L.C. submits its baseline errata filing to its FERC Gas Tariff, Second Revised Volume No 1, to be effective 4/28/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5001.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–713–001.

Applicants: Enbridge Offshore Pipelines (UTOS) LLC.

Description: Enbridge Offshore Pipelines (UTOS) LLC submits tariff filing per 154.203: eTariff Baseline Resubmittal to be effective 6/5/2010.

Filed Date: 08/25/2010.

Accession Number: 20100825–5052.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–778–001.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Stingray Pipeline Company, L.L.C. submits tariff filing per 154.203: eTariff Baseline Resubmittal to be effective 6/30/2010.

Filed Date: 08/25/2010.

Accession Number: 20100825–5059.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010

Docket Numbers: RP10–975–001.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Sub. Ninth Revised Sheet 154 *et al* of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 8/13/10.

Filed Date: 08/25/2010.

Accession Number: 20100825–0208.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1035–001.

Applicants: Mississippi Hub, LLC.

Description: Mississippi Hub, LLC submits tariff filing per 154.203: Mississippi Hub FERC Gas Tariff Compliance Filing to be effective 8/26/2010.

Filed Date: 08/27/2010.

Accession Number: 20100827–5006.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22263 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 27, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1100–000.

Applicants: SG Resources Mississippi, LLC.

Description: SG Resources Mississippi, LLC submits tariff filing per 154.203: SG Resources Mississippi, LLC—Baseline Tariff Filing to be effective 8/23/2010.

Filed Date: 08/25/2010.

Accession Number: 20100825–5060.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1101–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits a Negotiated Rate Letter Agreement with Cross Timbers Energy Services, Inc, Agreement No 29061.
Filed Date: 08/25/2010.
Accession Number: 20100825–0207.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1102–000.
Applicants: Black Marlin Pipeline Company.
Description: Black Marlin Pipeline Company submits tariff filing per 154.202: Baseline Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5042.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1103–000.
Applicants: Southeast Supply Header, LLC.
Description: Southeast Supply Header, LLC submits tariff filing per 154.402: SESH 2010 ACA Filing to be effective 10/1/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5047.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1104–000.
Applicants: Carolina Gas Transmission Corporation.
Description: Carolina Gas Transmission Corporation submits tariff filing per 154.402: Annual Charge Adjustment to be effective 10/1/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5062.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1105–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Report of Williston Basin Interstate Pipeline Company, Annual Report of Penalty Revenue Credits.
Filed Date: 08/26/2010.
Accession Number: 20100826–5094.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: RP10–1107–000.
Applicants: Cimarron River Pipeline, LLC.
Description: Cimarron River Pipeline, LLC submits tariff filing per 154.203: Baseline to be effective 9/1/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5021.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

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

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

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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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22262 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 30, 2010.

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

Docket Numbers: EC10–87–000.
Applicants: Triton Power Michigan LLC, Jackson Preferred Holdings LP.
Description: Triton Power Michigan LLC *et al.,* submits an application requesting authorization for the disposition of jurisdictional facilities associated with the proposed sale and transfer *etc.*
Filed Date: 08/27/2010.
Accession Number: 20100827–0210.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: EC10–88–000.
Applicants: Dynegy Inc.
Description: Joint Application for Approval Under Section 203 of the Federal Power Act.
Filed Date: 08/27/2010.
Accession Number: 20100827–5143.
Comment Date: 5 p.m. Eastern Time on Monday, September 27, 2010.

Docket Numbers: EC10–89–000.
Applicants: Langdon Wind, LLC, Crystal Lake Wind, LLC, Heartland Wind, LLC.
Description: Heartland Wind, LLC, Langdon Wind, LLC, and Crystal Lake Wind, LLC submit Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Action.
Filed Date: 08/27/2010.
Accession Number: 20100827–5168.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–60–000.
Applicants: New Harvest Wind Project LLC.
Description: Self-Certification of EG or FC of New Harvest Wind Project LLC.
Filed Date: 08/30/2010.
Accession Number: 20100830–5107.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: EG10–61–000.
Applicants: Dry Lake Wind Power II LLC.
Description: Notice of Self-Certification Of Exempt Wholesale Generator Status of Dry Lake Wind Power II LLC.
Filed Date: 08/30/2010.
Accession Number: 20100830–5135.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: EG10–62–000.

Applicants: LEANING JUPITER WIND POWER II LLC.

Description: Notice of Self-Certification Of Exempt Wholesale Generator Status Of Leaning Jupiter Wind Power II LLC.

Filed Date: 08/30/2010.

Accession Number: 20100830–5137.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: EG10–63–000.

Applicants: Hardscrabble Wind Power LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hardscrabble Wind Power LLC.

Filed Date: 08/30/2010.

Accession Number: 20100830–5140.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

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

Docket Numbers: ER94–1384–038; ER99–2329–009; ER00–1803–008; ER01–457–009; ER08–1432–005; ER02–1485–011; ER03–1108–011; ER03–1109–011; ER04–733–007.

Applicants: Morgan Stanley Capitol Group Inc., Naniwa Energy LLC, Power Contract Finance, LLC, South Eastern Generating Corporation, SOUTH EASTERN ELECTRIC DEVELOPMENT CORP, Utility Contract Funding II, LLC, MS Solar Solutions Corp., Power Contract Financing II, L.L.C., Power Contract Financing II, Inc.

Description: Supplemental Notice of Change in Status of Morgan Stanley Capital Group Inc., *et al.*

Filed Date: 08/27/2010.

Accession Number: 20100827–5138.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER99–2416–009.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company submits limited changes to its market based rate tariff filing on 3/8/10.

Filed Date: 08/27/2010.

Accession Number: 20100830–0203.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER00–107–005.

Applicants: La Paloma Generating Company, LLC.

Description: Supplemental Information of La Paloma Generating Company, LLC.

Filed Date: 08/27/2010.

Accession Number: 20100827–5139.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER02–1695–008; ER02–2309–007.

Applicants: Cabazon Wind Partners, LLC; Whitewater Hill Wind Partners, LLC.

Description: Supplement to Updated Market Power Analysis of Cabazon Wind Partners, LLC, *et al.*

Filed Date: 08/27/2010.

Accession Number: 20100827–5166.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER03–534–010.

Applicants: Ingenco Wholesale Power, LLC.

Description: Clarification to Notice of Change in Status of Ingenco Wholesale Power, LLC.

Filed Date: 08/27/2010.

Accession Number: 20100827–5165.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER07–232–004; ER07–374–003; ER05–1316–003.

Applicants: Aragonne Wind LLC; Buena Vista Energy, LLC; Kumeyaay Wind LLC.

Description: Amendment To Request For Category 1 Seller.

Filed Date: 08/27/2010.

Accession Number: 20100827–5135.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER08–770–004.

Applicants: Longview Power.

Description: Clarification to Change-in-Status Notification of Longview Power, LLC.

Filed Date: 08/27/2010.

Accession Number: 20100827–5164.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–1546–001.

Applicants: GDF SUEZ Energy Marketing NA, Inc.

Description: GDF SUEZ Energy Marketing NA, Inc. submits tariff filing per 35: GSEMNA Supplement to Baseline MBR eTariff Filing to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5068.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–1550–001.

Applicants: Northeastern Power Company.

Description: Northeastern Power Company submits tariff filing per 35: NEPCO Supplement to Baseline MBR eTariff Filing to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5069.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–1600–001.

Applicants: Forward Energy LLC.

Description: Forward Energy LLC submits tariff filing per 35: Supplement to Category 1 Exemption Filing to be effective 10/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5059.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–1602–001.

Applicants: Beech Ridge Energy LLC.

Description: Beech Ridge Energy LLC submits tariff filing per 35: Supplement to Category 1 Exemption Filing to be effective 10/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5054.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–1606–001.

Applicants: Grand Ridge Energy IV LLC.

Description: Grand Ridge Energy IV LLC submits tariff filing per 35: Supplement to Category 1 Exemption Filing to be effective 10/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5061.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–1607–001.

Applicants: Grand Ridge Energy V LLC.

Description: Grand Ridge Energy V LLC submits tariff filing per 35: Supplement to Category 1 Exemption Filing to be effective 10/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5062.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2108–000.

Applicants: Heritage Stoney Corners Wind Farm I, LLC.

Description: Heritage Stoney Corners Wind Farm I, LLC Supplements its July 30 submission.

Filed Date: 08/30/2010.

Accession Number: 20100830–5071.

Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2195–001.

Applicants: Driftwood, LLC.

Description: Driftwood LLC submits the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authorization.

Filed Date: 08/27/2010.

Accession Number: 20100830–0202.

Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2434–000.

Applicants: Fenton Power Partners I, LLC.

Description: Fenton Power Partners I, LLC submits tariff filing per 35.12: Fenton Power Partners I LLC Market-Based Rate Tariff Baseline Filing to be effective 8/27/2010.

Filed Date: 08/27/2010.
Accession Number: 20100827–5123.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2435–000.
Applicants: Camden Plant Holdings, LLC.
Description: Camden Plant Holdings, LLC submits tariff filing per 35.12: Camden Plant Holding, L.L.C. MBR and Reactive Power Tariffs to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5134.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2436–000.
Applicants: Wapsipinicon Wind Project, LLC.
Description: Wapsipinicon Wind Project, LLC submits tariff filing per 35.12: Wapsipincon Wind Project LLC Market-Based Rate Tariff Baseline Filing to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5156.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2437–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits a baseline filing of its Market-Based Rate Tariff, FERC Electric Tariff, Volune No. 3, to be effective 8/27/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5000.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2438–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits its Baseline Filing of the Transmission, Markets and Services Tariff, FERC Electric Tariff, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5002.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2439–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.12: Large Generator Interconnection Agreement between APS and Solar Solar One to be effective 8/31/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5015.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2440–000.
Applicants: Dartmouth Power Associates Limited Partnership.
Description: Dartmouth Power Associates Limited Partnership submits their Limited Partnership MBR Tariff, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5021.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2441–000.
Applicants: Central Vermont Public Service Corporation.
Description: Central Vermont Public Service Corporation submits its Baseline Filing of Market Based Rate Tariffs, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5023.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2442–000.
Applicants: Elmwood Park Power LLC.
Description: Elmwood Park Power LLC submits its baseline Market-Based Rate Tariff and its Reactive Supply and Voltage Control From Generation Sources Service Tariff, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5024.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2443–000.
Applicants: Lowell Cogeneration Company Limited Partnership.
Description: Lowell Cogeneration Company Limited Partnership submits its baseline filing of Market-Based Rate Tariff, Fifth Revised Rate Schedule, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5030.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2444–000.
Applicants: Newark Bay Cogeneration Partnership, LP.
Description: Newark Bay Cogeneration Partnership, LP submits its baseline Market-Based Rate Tariff and its Reactive Supply and Voltage Control From Generation Sources Service Tariff, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5032.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2445–000.
Applicants: The Premcor Refining Group Inc.
Description: The Premcor Refining Group Inc. submits its baseline filing to F.E.R.C. Electric Tariff No. 2, Original Sheet, Version 1.0.0, to be effective 8/31/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5034.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2446–000.
Applicants: Pedricktown Cogeneration Company LP.
Description: Pedricktown Cogeneration Company LP submits its baseline Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 1, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5035.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2447–000.
Applicants: Power City Partners, LP.
Description: Power City Partners, LP submits its baseline Market-Based Rate Tariff, Tenth Revised FERC Electric Tariff No. 1, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5036.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2448–000.
Applicants: Brush Cogeneration Partners.
Description: Brush Cogeneration Partners submits its Baseline filing of market-based rates tariff, Rate Schedule FERC No. 1, to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5038.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2449–000.
Applicants: York Generation Company LLC.
Description: York Generation Company LLC submits tariff filing per 35.12: York Generation Company LLC MBR and Reactive Power Tariffs to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5044.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2450–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1534R2 Kansas Municipal Energy Agency NITSA and NOA to be effective 8/1/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5046.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2451–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1981 Western Farmers Electric Cooperative Interconnection Agreement to be effective 10/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5091.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2452–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 549R5 Board of Public Utilities Springfield, MO NITSA and NOA to be effective 8/1/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5092.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2455–000.
Applicants: Valero Power Marketing LLC.
Description: Valero Power Marketing LLC submits tariff filing per 35.12: Valero Power Marketing LLC MBR tariff to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5113.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2456–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–08–30 CAISO Financial Security Deposit Compliance EL10–15 to be effective 7/1/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5145.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2457–000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits tariff filing per 35.12: FPL OATT Baseline Filing to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5151.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

Docket Numbers: ER10–2458–000.
Applicants: NedPower Mount Storm, LLC.
Description: NedPower Mount Storm, LLC submits tariff filing per 35.12: Baseline to be effective 8/30/2010.
Filed Date: 08/30/2010.
Accession Number: 20100830–5152.
Comment Date: 5 p.m. Eastern Time on Monday, September 20, 2010.

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

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

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

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

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–22260 Filed 9–7–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 27, 2010.

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

Docket Numbers: EC10–86–000.
Applicants: NRG South Central Generating LLC, CottonWood Energy Company LP.
Description: Cottonwood Energy Company LP submits application for authorization under Section 203 of the Federal Power Act, *etc.*
Filed Date: 08/26/2010.
Accession Number: 20100827–0205.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–38–000.
Applicants: CalRENEW–1 LLC.
Description: Notice of self certification of exempt wholesale generator status re CalRenew-1 LLC.
Filed Date: 08/27/2010.
Accession Number: 20100827–0028.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

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

Docket Numbers: ER00–2918–020; ER01–1654–023; ER01–556–019; ER10–346–006; ER10–662–002; ER02–2567–020; ER04–485–018; ER05–261–013; ER05–728–013; ER08–537–002; ER08–860–002; ER99–2948–021.
Applicants: Constellation Energy Commodities Group, R.E. Ginna Nuclear Power Plant, LLC, Constellation Pwr Source Generation LLC, Constellation NewEnergy, Inc., Nine Mile Point Nuclear Station, LLC, Safe Harbor Water Power Corporation, Baltimore Gas & Electric Company, Handsome Lake Energy, LLC, Constellation Energy Commodities Group M, CER Generation, LLC, Calvert Cliffs Nuclear Power Plant, LLC, CER Generation II, LLC.
Description: Notice of change in status and Q2 2010 land acquisition report of Baltimore Gas and Electric Company, *et al.*

Filed Date: 07/27/2010.
Accession Number: 20100727–5077.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–1651–001.
Applicants: Golden State Water Company.
Description: Golden State Water Company submits tariff filing per 35: Triennial Market Power Update to be effective 6/30/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5022.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2030–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits instant errata filing to correct a typographical error in its 7/28/10 filing providing notice of cancellation of Original Service Agreement 1548 *etc.*
Filed Date: 08/26/2010.
Accession Number: 20100827–0204.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2415–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Section 7 Filing to be effective 10/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5112.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2416–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2041 Kansas City Board of Public Utilities PTP to be effective 8/1/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5116.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2417–000.
Applicants: Exxon Mobil Generators.
Description: Exxon Mobil Generators submits its baseline filing, FERC Electric Tariff, First Revised Volume No 1 pursuant to Order No 714, to be effective 8/26/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5009.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2418–000.
Applicants: Georgia-Pacific Companies.
Description: Georgia-Pacific Companies submits the baseline filing, FERC Electric Tariff, First Revised Volume No 1 pursuant to Order No 714, to be effective 8/26/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5010.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2419–000.
Applicants: U.S. Gas & Electric, Inc.
Description: U.S. Gas & Electric, Inc. submits tariff filing per 35.12: USGE Baseline Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5040.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2420–000.
Applicants: ESPI New England, Inc.
Description: ESPI New England, Inc. submits tariff filing per 35.12: ESPI New England FERC Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5044.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2421–000.
Applicants: Energy Services Providers, Inc.
Description: Energy Services Providers, Inc. submits tariff filing per 35.12: Energy Services Providers FERC Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5046.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2422–000.
Applicants: Rocky Mountain Power.
Description: Rocky Mountain Power submits tariff filing per 35.12: Rocky Mountain Power MBR Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5048.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2423–000.
Applicants: Flat Rock Windpower LLC.
Description: Flat Rock Windpower LLC submits tariff filing per 35.12: Flat Rock Windpower LLC MBR Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5049.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2424–000.
Applicants: Rail Splitter Wind Farm, LLC.
Description: Rail Splitter Wind Farm, LLC submits tariff filing per 35.12: Rail Splitter Wind Farm, LLC MBR Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5063.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2425–000.
Applicants: Pioneer Prairie Wind Farm I, LLC.
Description: Pioneer Prairie Wind Farm I, LLC submits tariff filing per 35.12: Pioneer Prairie Wind Farm I, LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5140.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2426–000.
Applicants: Sagebrush Power Partners, LLC.
Description: Sagebrush Power Partners, LLC submits tariff filing per 35.12: Sagebrush Power Partners, LLC MBR Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5070.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2427–000.
Applicants: Telocaset Wind Power Partners, LLC.
Description: Telocaset Wind Power Partners, LLC submits tariff filing per 35.12: Telocaset Wind Power Partners, LLC MBR Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5081.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2428–000.
Applicants: Wheat Field Wind Power Project LLC.
Description: Wheat Field Wind Power Project LLC submits tariff filing per 35.12: Wheat Field Wind Power Project LLC MBR Tariff to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5087.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2429–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1266R2 Kansas Municipal Energy Agency NITSA and NOA to be effective 8/1/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5111.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2430–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits tariff filing per 35.12: Avista Corporation OATT Baseline Filing to be effective 8/27/2010.
Filed Date: 08/27/2010.

Accession Number: 20100827–5116.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2431–000.
Applicants: Chanarambie Power Partners, LLC.
Description: Chanarambie Power Partners, LLC submits tariff filing per 35.12: Chanarambie Power Partners LLC Market-Based Rate Tariff Baseline Filing to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5117.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2432–000.
Applicants: Bayonne Plant Holding, LLC.
Description: Bayonne Plant Holding, LLC submits tariff filing per 35.12: Bayonne Plant Holding MBR and Reactive Power Tariffs to be effective 8/27/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5121.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

Docket Numbers: ER10–2433–000.
Applicants: Northern States Power Company, a Minnesota.
Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii): 2010–8–27_FirstRevVolNo3_Coversheet-CAPXAgmnt to be effective 8/18/2010.
Filed Date: 08/27/2010.
Accession Number: 20100827–5122.
Comment Date: 5 p.m. Eastern Time on Friday, September 03, 2010.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–2–000.
Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.
Description: Notice of change in status and Q2 2010 land acquisition report of Baltimore Gas and Electric Company, *et al.*
Filed Date: 07/27/2010.
Accession Number: 20100727–5077.
Comment Date: 5 p.m. Eastern Time on Friday, September 17, 2010.

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

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

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

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

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–22259 Filed 9–7–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 26, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–59–000.
Applicants: Pattern Gulf Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 08/25/2010.
Accession Number: 20100825–5097.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

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

Docket Numbers: ER99–1115–014; ER98–1796–013; ER98–1127–014; ER07–486–005; ER07–1406–005; ER07–649–004; ER10–204–003; ER97–4281–022; ER10–574–002; ER99–1116–014.
Applicants: EL Segundo Power II LLC, Long Beach Generation LLC, Long Beach Peakers LLC, NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, NRG Solar Blythe LLC, Saguaro Power Company, A Limited Partner.
Description: Amendment to Application of Cabrillo Power I LLC, *et. al.*
Filed Date: 08/26/2010.
Accession Number: 20100826–5100.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER07–1174–006; OA07–74–006.
Applicants: MATL LLP.
Description: MATL LLP submits the instant filing to comply with the Commission's directive.
Filed Date: 08/25/2010.
Accession Number: 20100826–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–1290–001.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35: San Diego Gas & Electric Company FERC Electric Tariff, Volume 10 to be effective 8/26/2010.

Filed Date: 08/26/2010.
Accession Number: 20100826–5057.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2389–000.
Applicants: San Joaquin Cogen, LLC.
Description: San Joaquin Cogen, LLC submits tariff filing per 35.12: San Joaquin Cogen, LLC MBR Tariff to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5100.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2390–000.
Applicants: Bicent (California) Malburg LLC.
Description: Bicent (California) Malburg LLC submits tariff filing per 35.12: Bicent (California) Malburg MBR Tariff to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5111.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2391–000.
Applicants: Vermont Yankee Nuclear Power Corporation.
Description: Vermont Yankee Nuclear Power Corporation submits tariff filing per 35.12: Vermont Yankee Market-Based Rate Tariff Baseline Filing to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5118.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2392–000.
Applicants: State Line Energy, LLC.
Description: State Line Energy, LLC submits tariff filing per 35.12: Baseline to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5119.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2393–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 08–25–10 TSR Engine Removal to be effective 10/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5120.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2394–000.
Applicants: BIV Generation Company, LLC.
Description: BIV Generation Company, LLC submits tariff filing per 35.12: BIV Generation Company, LLC MBR Tariff to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5121.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2395–000.
Applicants: Colorado Power Partners.
Description: Colorado Power Partners submits tariff filing per 35.12: Colorado Power Partners MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5030.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2396–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA and Service Agmt with SCE 2.5MW–Site 22 Solar Project to be effective 8/27/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5032.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2397–000.
Applicants: Arlington Wind Power Project LLC.
Description: Arlington Wind Power Project LLC submits tariff filing per 35.12: Arlington Wind Power Project MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5034.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2398–000.
Applicants: Blackstone Wind Farm, LLC.
Description: Blackstone Wind Farm, LLC submits tariff filing per 35.12: Blackstone Wind Farm, LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5035.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2399–000.
Applicants: Blackstone Wind Farm II LLC.
Description: Blackstone Wind Farm II LLC submits tariff filing per 35.12: Blackstone Wind Farm II LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5039.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2400–000.
Applicants: Blue Canyon Windpower LLC.
Description: Blue Canyon Windpower LLC submits tariff filing per 35.12: Blue Canyon Windpower LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5040.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2401–000.
Applicants: Blue Canyon Windpower II LLC.
Description: Blue Canyon Windpower II LLC submits tariff filing per 35.12: Blue Canyon Windpower II LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5041.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2402–000.
Applicants: Blue Canyon Windpower V LLC.
Description: Blue Canyon Windpower V LLC submits tariff filing per 35.12: Blue Canyon Windpower V LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5049.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2403–000.
Applicants: Cloud County Wind Farm, LLC.
Description: Cloud County Wind Farm, LLC submits tariff filing per 35.12: Cloud County Wind Farm, LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5053.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2404–000.
Applicants: Flat Rock Windpower II LLC.
Description: Flat Rock Windpower II LLC submits tariff filing per 35.12: Flat Rock Windpower II LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5068.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2405–000.
Applicants: High Prairie Wind Farm II, LLC.
Description: High Prairie Wind Farm II, LLC submits tariff filing per 35.12: High Prairie Wind Farm II, LLC MBR Tariff to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5070.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2406–000.
Applicants: High Trail Wind Farm, LLC.
Description: High Trail Wind Farm, LLC submits its baseline market-based tariff filing, to be effective 8/26/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5071.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2407–000.
Applicants: Lost Lakes Wind Farm LLC.

Description: Lost Lakes Wind Farm LLC submits tariff filing per 35.12: Lost Lakes Wind Farm LLC MBR Tariff to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5086.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2408–000.

Applicants: Marble River, LLC.

Description: Marble River, LLC submits tariff filing per 35.12: Marble River, LLC MBR Tariff to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5087.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2409–000.

Applicants: Meadow Lake Wind Farm LLC.

Description: Meadow Lake Wind Farm LLC submits tariff filing per 35.12: Meadow Lake Wind Farm LLC MBR Tariff to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5088.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2410–000.

Applicants: Meadow Lake Wind Farm II LLC.

Description: Meadow Lake Wind Farm II LLC submits tariff filing per 35.12: Meadow Lake Wind Farm II LLC MBR Tariff to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5091.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2411–000.

Applicants: Meadow Lake Wind Farm III LLC.

Description: Meadow Lake Wind Farm III LLC submits tariff filing per 35.12: Meadow Lake Wind Farm III LLC MBR Tariff to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5093.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2412–000.

Applicants: Meadow Lake Wind Farm IV LLC.

Description: Meadow Lake Wind Farm IV LLC submits tariff filing per 35.12: Meadow Lake Wind Farm IV LLC MBR Tariff to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5096.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2413–000.

Applicants: Kincaid Generation, LLC.

Description: Kincaid Generation, LLC submits tariff filing per 35.12: Baseline to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5097.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER10–2414–000.

Applicants: Old Trail Wind Farm, LLC.

Description: Old Trail Wind Farm, LLC submits tariff filing per 35.12: Old Trail Wind Farm, LLC MBR Tariff to be effective 8/26/2010.

Filed Date: 08/26/2010.

Accession Number: 20100826–5099.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

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

Docket Numbers: ES10–53–000.

Applicants: PATH Allegheny Transmission Company, LLC, PATH Allegheny Maryland Transmission Commission.

Description: PATH Allegheny Transmission Company, LLC, *et al.,* Supplement to Section 204 Amendment Application.

Filed Date: 08/25/2010.

Accession Number: 20100825–5136.

Comment Date: 5 p.m. Eastern Time on Friday, September 03, 2010.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–2–000.

Applicants: Order 697–C 2010 2nd Qtr Site Acquisition.

Description: NRG Power Marketing Inc., *et al.,* Order 697–C Compliance Filing Regarding Site Control and Request for Waiver.

Filed Date: 08/26/2010.

Accession Number: 20100826–5048.

Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

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

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

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

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22258 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 25, 2010.

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

Docket Numbers: ER08–850–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. Informational report on Operation of Rate Schedule 7, Charges for Wind Forecasting Service.
Filed Date: 08/16/2010.
Accession Number: 20100816–5156.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: ER10–842–002.
Applicants: Energy Plus Holdings LLC.
Description: Report of Energy Plus Holdings LLC.
Filed Date: 06/04/2010.
Accession Number: 20100604–5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 21, 2010.

Docket Numbers: ER10–1621–001.
Applicants: Golden State Water Company.
Description: Golden State Water Company submits tariff filing per 35: Baseline Tariff Filing to be effective 6/29/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5042.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2370–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits tariff filing per 35.12: Baseline Filing for NSTAR Electric Company Market-Based Rate Tariff to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5137.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2371–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator submits tariff filing per 35: Compliance Filing resubmittal—Dockets EL07–39 and ER08–695 to be effective 6/30/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5138.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2372–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.15: Cancellation of Tariff ID to be effective 12/31/1998.
Filed Date: 08/24/2010.
Accession Number: 20100824–5152.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2373–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits its baseline filing of its Residential Purchase and Sale Agreement designated as Rate Schedule No. 448, to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5000.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2374–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits its baseline filing of its Market-Based Rates Tariff designated as FERC Electric Tariff, Fifth Revised Volume No. 8, to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5001.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2375–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits its baseline filing of its Electric Transmission Reassignment Tariff designated as FERC Electric Tariff, First Revised Volume No. 449, to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5002.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2376–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits its baseline filing of its Jackson Prairie Gas Storage Project Agreement designated as FERC Gas Tariff, First Revised Volume No. 1, to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5003.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2377–000.
Applicants: MATEP Limited Partnership.
Description: MATEP Limited Partnership submits a Notice of Cancellation of its Wholesale Power Supply Agreement, Service Agreement 1 file with the Commission.
Filed Date: 08/24/2010.
Accession Number: 20100825–0201.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2378–000; ER10–2379–000.
Applicants: MATEP Limited Partnership; MATEP LLC.
Description: Petition of MATEP Limited Partnership *et al.,* for acceptance of revised market-based rate tariffs and Waiver of Prior Notice Requirements.
Filed Date: 08/24/2010.
Accession Number: 20100825–0202.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2380–000.
Applicants: Interstate Power and Light Company.
Description: Interstate Power and Light Company submits tariff filing per 35.12: Baseline IPL Agreements to be effective 8/25/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5025.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2381–000.
Applicants: Walnut Creek Energy, LLC.
Description: Walnut Creek Energy, LLC submits tariff filing per 35.12: Walnut Creek Energy, LLC Baseline Filing to be effective 8/26/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5029.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2382–000.
Applicants: San Juan Mesa Wind Project, LLC.
Description: San Juan Mesa Wind Project, LLC submits tariff filing per 35.12: San Juan Mesa Wind Project, LLC Baseline Filing to be effective 8/26/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5034.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2383–000.
Applicants: Mountain Wind Power II LLC.
Description: Mountain Wind Power II LLC submits tariff filing per 35.12: Mountain Wind Power II LLC Baseline Filing to be effective 8/26/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5037.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2384–000.
Applicants: Mountain Wind Power, LLC.
Description: Mountain Wind Power, LLC submits tariff filing per 35.12: Mountain Wind Power, LLC Baseline Filing to be effective 8/26/2010.
Filed Date: 08/25/2010.
Accession Number: 20100825–5038.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2385–000.

Applicants: Elkhorn Ridge Wind, LLC.

Description: Elkhorn Ridge Wind, LLC submits tariff filing per 35.12: Elkhorn Ridge Wind, LLC Baseline Filing to be effective 8/26/2010.

Filed Date: 08/25/2010.

Accession Number: 20100825–5039.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2386–000.

Applicants: Fairless Energy, LLC.

Description: Fairless Energy, LLC submits tariff filing per 35.12: Baseline to be effective 8/25/2010.

Filed Date: 08/25/2010.

Accession Number: 20100825–5051.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2387–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 4 With Seminole Electric Cooperative to be effective 8/26/2010.

Filed Date: 08/25/2010.

Accession Number: 20100825–5061.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Docket Numbers: ER10–2388–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.12: BREC Attachment RR1 (v2) to be effective 8/25/2010.

Filed Date: 08/25/2010.

Accession Number: 20100825–5070.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 15, 2010.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH10–19–000.

Applicants: Cap Rock Holding Corporation, Cap Rock Energy Corporation.

Description: Notice of Material Change in Facts and Termination of Holding Company Status *et al.*

Filed Date: 08/12/2010.

Accession Number: 20100812–5127.

Comment Date: 5 p.m. Eastern Time on Thursday, September 02, 2010.

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

Docket Numbers: RR10–13–000.

Applicants: North American Electric Reliability Corporation.

Description: Request of the North American Electric Reliability Corporation for Acceptance of its 2011 Business Plan and Budget and the 2011 Business Plans and Budgets of Regional Entities and for Approval of Proposed Assessments to Fund Budgets.

Filed Date: 08/24/2010.

Accession Number: 20100824–5155.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

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

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

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

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22257 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 31, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1113–000.

Applicants: PetroLogistics Natural Gas Storage, LLC.

Description: PetroLogistics Natural Gas Storage, LLC submits First Revised Sheet No. 13 et al. to FERC Gas Tariff, Original Volume No. 1, to be effective 9/27/2010.

Filed Date: 08/27/2010.

Accession Number: 20100830–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: RP10–1116–000.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits tariff filing per 154.204: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5105.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1117–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits Order No. 587–U Compliance Filing of its FERC Gas Tariff, Eight Revised Volume No. 1, to be effective 11/1/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5115.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1118–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits their tariff filing per to Order No. 587–U Compliance Filing, to be effective 11/1/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5120.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1119–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits tariff filing per 154.203: National Fuel Baseline to be effective 8/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5125.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1120–000.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits tariff filing per 154.204: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5126.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1121–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits tariff filing per 154.204: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5127.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1122–000.

Applicants: Saltville Gas Storage Company LLC.

Description: Saltville Gas Storage Company LLC submits tariff filing per 154.204: Order No. 587–U Compliance Filing to be effective 11/1/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5128.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1123–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: 2010 ACA to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5021.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1124–000.

Applicants: Stingray Pipeline Company, LLC.

Description: Stingray Pipeline Company, LLC submits tariff filing per 154.203: Order 587–U Compliance to be effective 11/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5026.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1125–000.

Applicants: Enbridge Offshore Pipelines (UTOS) LLC.

Description: Enbridge Offshore Pipelines (UTOS) LLC submits tariff filing per 154.203: Order 587–U Compliance to be effective 11/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5027.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1126–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits tariff filing per 154.203: IG Rate 08–31–10 to be effective 9/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5029.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1127–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.203: Delta Lateral Project Compliance with Docket No. CP09–237 to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5038.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1128–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.203: RP01–245–031 Compliance (Station 85 Pooling) to be effective 10/1/2010.

Filed Date: 08/31/2010.

Accession Number: 20100831–5046.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1129–000.

Applicants: White River Hub, LLC.

Description: White River Hub, LLC submits tariff filing per 154.402: ACA 2010 to be effective 10/1/2010 under RP10–01129–000 Filing Type: 630.

Filed Date: 08/31/2010.

Accession Number: 20100831–5069.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

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

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

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

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

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22256 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 30, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1108–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits tariff filing per 154.403(d)(2): Northwest Pipeline GP—Fuel Factor Filing, to be effective 10/1/2010.

Filed Date: 08/27/2010.

Accession Number: 20100827–5080.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: RP10–1109–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Sixth Revised Sheet 205 *et al.* of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 9/29/2010.

Filed Date: 08/27/2010.

Accession Number: 20100827–0209.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: RP10–1110–000.

Applicants: Rendezvous Pipeline Company, LLC.

Description: Rendezvous Pipeline Company, LLC submits tariff filing per 154.203: Baseline to be effective 8/27/2010.

Filed Date: 08/27/2010.

Accession Number: 20100827–5106.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: RP10–1111–000.

Applicants: Clear Creek Storage Company, LLC.

Description: Clear Creek Storage Company, LLC submits tariff filing per 154.203: Compliance Filing Baseline Tariff to be effective 8/27/2010.

Filed Date: 08/27/2010.

Accession Number: 20100827–5115.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: RP10–1112–000.

Applicants: Alliance Pipeline LP.

Description: Alliance Pipeline LP submits tariff filing per 154.204: Sep, Oct 2010 auction to be effective 9/1/2010.

Filed Date: 08/27/2010.

Accession Number: 20100827–5137.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: RP10–1114–000.

Applicants: Monroe Gas Storage Company, LLC.

Description: Monroe Gas Storage Company, LLC submits tariff filing per 154.203: Monroe Compliance Filing to be effective 9/30/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5031.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: RP10–1115–000.

Applicants: Millennium Pipeline Company, LLC.

Description: Millennium Pipeline Company, LLC submits tariff filing per 154.203: NAESB V. 1.9 to be effective 11/1/2010.

Filed Date: 08/30/2010.

Accession Number: 20100830–5033.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

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

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

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

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

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22264 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–84–000]

CAlifornians for Renewable Energy, Inc. (CARE) v. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, California Public Utilities Commission; Notice of Complaint

September 1, 2010.

Take notice that on September 1, 2010, pursuant to the Federal Power Act, 16 U.S.C. 824d, 824e, 825e, and 825h (2008) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, (2010), CAlifornians for Renewable Energy, Inc. (Complainant) filed a complaint against Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and the California Public Utilities Commission (Collectively Respondents), alleging that the Respondents are violating the Federal Power Act by approving contracts for capacity and energy that exceeds the utilities' avoided cost cap and which also usurps the Commission's exclusive jurisdiction to determine the wholesale rates for electricity under its jurisdiction.

Complainant states that copies of the complaint were served upon Respondents and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 21, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22301 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–16–000]

Vagabond Ranch; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

September 1, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI10–16–000.

c. *Date Filed:* August 24, 2010.

d. *Applicant:* Vagabond Ranch.

e. *Name of Project:* Vagabond Ranch Small Hydro Project.

f. *Location:* The proposed Vagabond Ranch Small Hydro Project will be located on Bill and Willow Creeks, near the community of Grand Lake, Grand County, Colorado, affecting T. 4 N., R. 77 W., sec.10, Sixth Principal Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Blue Earth, Bradley Florentin, 200 South College Avenue, Suite 100, P.O. Box 973, Fort Collins, CO 80522; e-mail: *http://www.brad@flywater.com;* Telephone: (970) 231–5498.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* October 1, 2010.

All documents should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. Please include the docket number (DI10–16–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Vagabond Ranch Small Hydro Project will consist of: (1) An existing 10-foot-high, 208-foot-wide earthen dam, spanning Bill Creek; (2) a proposed 1,400-foot-long, 8-to-10-inch-diameter PVC penstock; (3) a proposed powerhouse containing a 5.3 or 9.2 kW Pelton-type turbine/generator; (4) a proposed 90-foot-long tailrace returning flows into Willow Creek; and (5) appurtenant facilities. The proposed project will not be connected to an interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22300 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11563–057]

Northern California Power Agency; Notice of Availability of Final Environmental Assessment

August 31, 2010.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Commission has reviewed an application filed by the Northern California Power Agency (licensee) on May 26, 2010, and supplemented on July 11 and August 9, 2010, requesting Commission approval to temporarily amend the license for the Upper Utica Project, FERC No. 11563. The licensee seeks Commission approval to partially draw down Lake Alpine and deviate from the minimum reservoir surface elevation and minimum water volume requirements of the project license in order to facilitate repairs to the low-level outlet works. The Environmental Assessment (EA) analyzes the environmental impacts of the proposed activities and concludes that approval of the application, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment. The project is located on Silver Creek and the North Fork Stanislaus River, in Tuolumne and Alpine Counties, California.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. A copy of the EA is attached to a Commission order titled "Order Approving Temporary License Amendment," issued August 31, 2010, and 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 the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22270 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–089]

Greenwood County, SC; Notice of Availability of Environmental Assessment

September 1, 2010.

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 47879), the Office of Energy Projects has prepared an environmental assessment (EA) for an application filed by Greenwood County, South Carolina (licensee) on January 26, 2010, requesting Commission approval to amend article 407 of its project license for the Buzzards Roost Hydroelectric Project (FERC No. 1267). The licensee requests permission to revise the schedule for management of lake levels (rule curve) to maintain the lake at the summer level until November 1 in order to facilitate late-season recreation. The licensee also proposes to maintain the lake at its annual low from January 15 until February 1 of each year in order to provide a period for adjacent landowners to work on permitted encroachments. The licensee states that it would vary from article 407 to perform necessary maintenances, safely manage flood flows, during operating emergencies, and to meet minimum flow requirements under article 408. The project is located on the Saluda River in Greenwood, Laurens, and Newberry Counties, South Carolina. The project does not occupy any federal lands.

The EA evaluates the environmental impacts that would result from approving the licensee's proposal to amend article 407 of the project license. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission Order titled "Order Amending License," issued August 31, 2010, and 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 (P–1267) 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 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22299 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13–023]

Green Island Power Authority; Notice of Availability of Draft Environmental Assessment

August 31, 2010.

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 47897), the Office of Energy Projects has reviewed the application for a new license for the 6.0-megawatt Green Island Hydroelectric Project, located on the Hudson River, in Albany County, New York, and has prepared a Draft Environmental Assessment (DEA). In the DEA, Commission staff analyzes the potential environmental effects of relicensing the project and conclude that issuing a new 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 DEA is on file with the Commission and is available for public inspection. The DEA 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 1–866–208–3676, 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.

The remaining hydro licensing procedural schedule is as follows:

Milestone	Target date
Comments of the DEA Modified terms and conditions.	September 30, 2010. November 29, 2010.

Milestone	Target date
Notice of availability of the final EA.	February 28, 2011.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Green Island Project No. 13–023" to all comments. For further information, contact Tom Dean at (202) 502–6041.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22269 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2621–009 and 12770–000]

Lockhart Power Company—South Carolina Pacolet Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

August 30, 2010.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the South Carolina State Historic Preservation Officer (hereinafter, South Carolina SHPO), and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Pacolet Hydroelectric Project Nos. 2621 and 12770.

The programmatic agreement, when executed by the Commission and the South Carolina SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Pacolet Hydroelectric Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Lockhart Power Company, as licensee for Pacolet Hydroelectric Project Nos. 2621 and 12770, and the Eastern Band of Cherokee Indians have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

John Eddins or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Carolina Dover Wilson or Representative, Review and Compliance Coordinator, South Carolina Department of Archives & History, 8301 Parklane Road, Columbia, SC 29223.

Tyler Howe or Representative, Eastern Band of Cherokee Indians, Qualla Boundary, P.O. Box 455, Cherokee, NC 28719.

C. Shane Boring, Kleinschmidt Associates, 204 Caughman Farm Lane, Suite 301, Lexington, SC 29072.

Bryan D. Stone or Representative, Lockhart Power Company, P.O. Box 10, 420 River Street, Lockhart, SC 29364.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

Any such motions may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support 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. Please put the project number (P–2621–009 and P–12770–000) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15-day period.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22268 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–10–002]

Transparency Provisions of Section 23 of the Natural Gas Act; Notice of Availability of Revised Form No. 552 for eFiling

August 31, 2010.

On August 17, 2010, the Office of Management and Budget approved a revised Form No. 552 under OMB Control Number 1902–0242. The Commission had modified Form No.

[1] 18 CFR 385.2010.

552 in Order 704–C on June 17, 2010 (131 FERC ¶ 61,246). Accordingly, today Commission staff has made available the revised Form No. 552, in a fillable format suitable for submission, on its Web site at *http://www.ferc.gov/docs-filing/forms.asp#552*.

Respondents should read the eFiling instructions, fill out the revised Form No. 552, and eFile their calendar year 2009 data to the Commission no later than October 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22274 Filed 9–7–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0019; FRL–8843–8]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2008 through September 30, 2009 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

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 onto 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 at the end of the emergency exemption of interest.

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

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0019. Publicly available docket materials are available either electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. "Quarantine" and "public health" exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions

A. U. S. States and Territories

Alabama

Department of Agriculture and Industries
Specific exemption: EPA authorized the use of diquat dibromide on canola as a pre-harvest aid (dessicant); July 5, 2009 to July 1, 2009. *Contact:* Marcel Howard.

Arkansas

State Plant Board
Crisis: On March 2, 2009, for the use of chlorantraniliprole on rice seed to control rice water weevil. This program ended on August 1, 2009. *Contact*: Marcel Howard.

On March 19, 2009, for the use of thiamethoxam as a rice seed treatment to control the insect pest, grape colaspis. This program ended on August 1, 2009. *Contact*: Andrea Conrath.

California

Environmental Protection Agency, Department of Pesticide Regulation
Specific exemption: EPA authorized the use of pyraclostrobin on Belgian endive to control *sclerotinia*; November 14, 2008 to January 31, 2009. *Contact*: Stacey Groce.

EPA authorized the use of boscalid on Belgian endive to control *sclerotinia*; November 14, 2008 to January 31, 2009. *Contact*: Stacey Groce.

EPA authorized the use of maneb on walnut to control walnut blight; December 5, 2008 to December 5, 2009. *Contact*: Libby Pemberton.

EPA authorized the use of thiophanate methyl on mushroom to control green mold; January 11, 2009 to December 31, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of lavandulyl sescioate on raisin, table, and wine grapes to control vine mealybugs; March 31, 2009 to September 30, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of naphthalene acetic acid on avocado to inhibit sprouting during storage; April 7, 2009 to September 30, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of avermectin on lima bean to control spider mites; May 1, 2009 to August 31, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of difenoconazole on almond to control Alternaria leaf spot; May 1, 2009 to June 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of propiconazole on nectarine to control sour rot; May 1, 2009 to September 30, 2009. *Contact:* Andrea Conrath.

EPA authorized the use of propiconazole on peach to control sour rot; May 1, 2009 to September 30, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of fenpyroximate in honeybee hives to control varroa mites; June 1, 2009 to September 30, 2009. *Contact*: Stacey Groce.

Crisis: On December 9, 2008, for the use of fenpyroximate in honeybee hives to control varroa mites. This program ended on April 30, 2009. *Contact*: Stacey Groce.

On December 19, 2008, for the use of clothianidin on onions to control seed corn maggot. This program ended on March 15, 2009. *Contact*: Stacey Groce.

On May 7, 2009, for the use of novaluron on strawberries to control lygus bug. This program ended on November 1, 2009. *Contact*: Marcel Howard.

Colorado

Department of Agriculture

Specific exemption: EPA authorized the use of fenpyroximate in honeybee hives to control varroa mites; October 6, 2008 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of acibenzolar on onions to control thrips, which transmit iris yellow spot virus; April 21, 2009 to September 1, 2009. *Contact*: Libby Pemberton.

EPA authorized the use of spirotetramat on dry bulb onion to control thrips, which transmit iris yellow spot virus; May 27, 2009 to September 30, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of avermectin on dry bulb onion to control thrips, which transmit iris yellow spot virus; June 23, 2009 to September 30, 2009. *Contact*: Andrew Ertman.

Delaware

Department of Agriculture

Specific exemption: EPA authorized the use of thiophanate methyl on mushroom to control green mold; January 11, 2009 to December 31, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of spiromesifen on soybean to control spider mites; May 22, 2009 to September 15, 2009. *Contact*: Andrea Conrath.

Florida

Department of Agriculture and Consumer Services

Specific exemption: EPA authorized the use of novaluron on strawberries to control sap beetles; December 31, 2008 to December 31, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of thiophanate on mushroom to control green mold; January 11, 2009 to December 31, 2009. *Contact*: Andrea Conrath.

Georgia

Department of Agriculture

Specific exemption: EPA authorized the use of diquat dibromide on canola as a pre-harvest aid (dessicant); June 4, 2009 to July 30, 2009. *Contact*: Marcel Howard.

Hawaii

Department of Agriculture

Crisis: On January 9, 2009, for the use of fipronil in feral beehive colonies to control varroa mites. This program ended on January 22, 2009. *Contact*: Stacey Groce.

Idaho

Department of Agriculture

Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; October 6, 2008 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of linuron on lentils to control mayweed chamomile and prickly lettuce; December 23, 2008 to June 20, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of endothall in agricultural irrigation canals to control various aquatic weeds; May 11, 2009 to September 15, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of spirotetramat on dry bulb onions to control thrips, which transmit iris yellow spot virus; May 29, 2009 to September 15, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of hexythiazox on sweet corn to control mites; June 25, 2009 to August 20, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of fenpyroximate in beehives to control varroa mites; September 30, 2009 to October 1, 2010. *Contact*: Stacey Groce.

Illinois

Department of Agriculture

Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; October 6, 2008 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of fenpyroximate in beehives to control varroa mites; September 30, 2009 to October 1, 2010. *Contact*: Stacey Groce. *Crisis*: On September 7, 2009, for the use of mandipropamid on basil to control downy mildew. This program ended on September 19, 2009. *Contact*: Marcel Howard.

Iowa

Department of Agriculture and Land Stewardship

Specific exemption: EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 25, 2009 to December 15, 2009. *Contact*: Andrew Ertman.

Kansas

Department of Agriculture

Specific exemption: EPA authorized the use of diquat dibromide on canola as a pre-harvest aid (dessicant); June 17, 2009 to July 6, 2009. *Contact*: Marcel Howard.

Kentucky

Department of Agriculture

Specific exemption: EPA authorized the use of diquat dibromide on canola as a pre-harvest aid (dessicant); June 5, 2009 to July 1, 2009. *Contact*: Marcel Howard.

Louisiana

Department of Agriculture and Forestry

Specific exemption: EPA authorized the use of chlorantraniliprole on rice seed to control rice water weevil; November 26, 2008 to July 31, 2009. *Contact*: Marcel Howard.

EPA authorized the use of pyraclostrobin on sugarcane to control Brown Rust (*Puccinia malanocephala*); February 13, 2009 to June 30, 2009. *Contact*: Libby Pemberton.

EPA authorized the use of anthraquinone on rice seed to repel blackbirds; March 6, 2009 to March 6, 2010. *Contact*: Marcel Howard.

Crisis: On February 27, 2009, for the use of anthraquinone in field and sweet corn seed to repel crows and blackbird species. This program ended on May 10, 2009. *Contact*: Marcel Howard.

Maryland

Department of Agriculture

Specific exemption: EPA authorized the use of thiophanate methyl on mushroom to control green mold; January 11, 2009 to December 31, 2009. *Contact*: Andrea Conrath.

Massachusetts

Massachusetts Department of Food and Agriculture
Specific exemption: EPA authorized the use of quinclorac on cranberry to control dodder disease; June 10, 2009 to July 31, 2009. *Contact*: Marcel Howard.

Michigan

Michigan Department of Agriculture
Specific exemption: EPA authorized the use of anthraquinone on field and sweet corn seed to repel sandhill cranes; February 17, 2009 to February 11, 2010. *Contact*: Marcel Howard.

EPA authorized the use of kasugamycin on apple to control fire blight; April 24, 2009 to April 20, 2010. *Contact*: Andrew Ertman.

EPA authorized the use of mancozeb on ginseng to control *Phytophthora* blight; May 22, 2009 to October 31, 2009. *Contact*: Stacey Groce.

EPA authorized the use of zoxamide on ginseng to control *Phytophthora* blight; May 22, 2009 to October 31, 2009. *Contact*: Stacey Groce.

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 25, 2009 to December 15, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of spirotetramat on dry bulb onions to control thrips; July 22, 2009 to September 30, 2009. *Contact*: Andrew Ertman.

Minnesota

Department of Agriculture
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; February 12, 2009 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of chlorophene in commercial and government laboratories, including testing, diagnostic, research, and necropsy laboratories, abattoirs, and other related facilities that handle deer, elk, sheep, and bovine tissues and wastes that are potentially contaminated to control prions; August 14, 2009 to August 14, 2012. *Contact*: Princess Campbell.

EPA authorized the use of anthraquinone on field and sweet corn seed to repel sandhill cranes; December 5, 2009 to July 30, 2010. *Contact*: Marcel Howard.

Mississippi

Department of Agriculture and Commerce
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; October 6, 2008 to October 1, 2009. *Contact*: Stacey Groce.

EPA authorized the use of anthraquinone on field and sweet corn seed to repel crows and blackbird species; February 27, 2009 to February 27, 2010. *Contact*: Marcel Howard.

EPA authorized the use of anthraquinone on rice seed to repel blackbirds; March 13, 2009 to March 6, 2010. *Contact*: Marcel Howard.

EPA authorized the use of chlorantraniliprole on sweet corn to control corn earworm; May 14, 2009 to August 1, 2009. *Contact*: Marcel Howard.

EPA authorized the use of fenpyroximate in beehives to control varroa mites; September 30, 2009 to October 1, 2010. *Contact*: Stacey Groce.
Crisis: On March 4, 2009, for the use of chlorantraniliprole in rice seed to control rice water weevil. This program ended on July 1, 2009. *Contact*: Marcel Howard.

Missouri

Department of Agriculture
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; October 6, 2008 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of chlorantraniliprole on rice seed to control rice water weevil; March 4, 2009 to June 15, 2009. *Contact*: Marcel Howard.

EPA authorized the use of anthraquinone on rice seed to repel blackbirds; March 6, 2009 to March 6, 2010. *Contact*: Marcel Howard.

EPA authorized the use of diquat bromide on canola as a pre-harvest aid (dessicant); June 5, 2009 to July 1, 2009. *Contact*: Marcel Howard.
Crisis: On March 4, 2009, for the use of chlorantraniliprole in rice seed to control rice water weevil. This program ended on June 15, 2009. *Contact*: Marcel Howard.

Montana

Department of Agriculture
Quarantine: EPA authorized the use of chlorophene in commercial and government laboratories, including testing, diagnostic, research, and necropsy laboratories, abattoirs, and other related facilities that handle animal tissues and wastes that are potentially contaminated to control prions; September 29, 2009 to September 29, 2012. *Contact*: Princess Campbell.

Nebraska

Department of Agriculture
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; February 12, 2009 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of anthraquinone on field and sweet corn seed to repel ring-necked pheasants; April 7, 2009 to April 20, 2010. *Contact*: Marcel Howard.

EPA authorized the use of fenpyroximate in beehives to control varroa mites; September 30, 2009 to October 1, 2010. *Contact*: Stacey Groce.

Nevada

Department of Agriculture
Specific exemption: EPA authorized the use of bifenazate on timothy to control Banks grass mite; March 2, 2009 to September 1, 2009. *Contact*: Andrea Conrath.

New Jersey

Department of Environmental Protection
Specific exemption: EPA authorized the use of clothianidin on onion to control corn maggot, onion maggot, and thrips; May 1, 2009 to May 1, 2010. *Contact*: Stacey Groce.

EPA authorized the use of quinclorac on cranberry to control dodder; June 16, 2009 to December 15, 2009. *Contact*: Marcel Howard.

New Mexico

Department of Agriculture
Specific exemption: EPA authorized the use of spirotetramat on dry bulb onion to control thrips, which transmit iris yellow spot virus; May 29, 2009 to October 31, 2009. *Contact*: Andrew Ertman.

New York

Department of Environmental Conservation
Specific exemption: EPA authorized the use of spirotetramat on dry bulb onion to control thrips, which transmit iris yellow spot virus; May 29, 2009 to September 15, 2009. *Contact*: Stacey Groce.

EPA authorized the use of fenpyroximate in honeybee hives to control varroa mites; June 1, 2009 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of avermectin on dry bulb onion to control thrips, which transmit iris yellow spot virus; June 23, 2009 to September 15, 2009. The state had authorized use under a crisis prior to this, on June 18, 2009; that program ended on with the authorization of the specific of the exemption. *Contact*: Andrew Ertman.

North Carolina

Department of Agriculture
Crisis: On June 2, 2009, for the use clothianidin on sweet potato to control white grubs. This program ended on June 17, 2009. *Contact*: Stacey Groce.

North Dakota

Department of Agriculture
Specific exemption: EPA authorized the use of fenpyroximate in honeybee hives to control varroa mites; March 27, 2009 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of anthraquinone in field and sweet corn to repel ring-necked pheasants; April 7, 2009 to April 7, 2010. *Contact*: Marcel Howard.

EPA authorized the use of sulfentrazone on flax to control kochia; April 21, 2009 to June 30, 2009. *Contact*: Andrew Ertman.

Ohio

Department of Agriculture
Specific exemption: EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 20, 2009 to December 15, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of spirotetramat on dry bulb onions to control broadleaf weeds; July 22, 2009 to September 15, 2009. *Contact*: Andrew Ertman.

Oklahoma

Department of Agriculture
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; December 3, 2008 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of pendimethalin on Bermuda grass pastures and hayfields to control sandbur species; March 12, 2009 to June 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of diquat dibromide on canola as a pre-harvest aid (dessicant); June 17, 2009 to July 1, 2009. *Contact*: Marcel Howard.
Crisis: On May 23, 2009, for the use of s-metolachlor on sesame to control broadleaf weeds. This program ended on June 7, 2009. *Contact*: Marcel Howard.

Oregon

Department of Agriculture
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; October 6, 2008 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of thiophanate methyl on mushroom to control green mold; January 11, 2009 to December 31, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of fenoxaprop-p-ethyl on grass grown for seed to control grassy weeds; January 23, 2009 to September 15, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of fipronil on rutabaga to control the cabbage maggot; March 6, 2009 to September 30, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of fipronil on turnip to control the cabbage maggot; March 6, 2009 to September 30, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; March 15, 2009 to February 28, 2010. *Contact*: Andrew Ertman.

EPA authorized the use of bifenthrin on orchardgrass to control orchardgrass billbug; April 21, 2009 to December 15, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of spirotetramat on dry bulb onion to control thrips, which transmit iris yellow spot virus; May 29, 2009 to September 15, 2009. *Contact*: Andrew Ertman.

Pennsylvania

Department of Agriculture
Specific exemption: EPA authorized the use of thiophanate methyl on mushrooms to control green mold; January 11, 2009 to December 31, 2009. *Contact*: Andrea Conrath.

South Dakota

Department of Agriculture
Specific exemption: EPA authorized the use of anthraquinone in field and sweet corn to repel ring-necked pheasants; April 7, 2010 to April 7, 2011. *Contact*: Marcel Howard.

EPA authorized the use of fenpyroximate in honeybee hives to control varroa mites; May 14, 2009 to September 30, 2009. *Contact*: Stacey Groce.

Tennessee

Department of Agriculture
Specific exemption: EPA authorized the use of diquat dibromide on canola as a pre-harvest aid (dessicant); June 5, 2009 to July 1, 2009. *Contact*: Marcel Howard.

Texas

Department of Agriculture
Crisis: On February 5, 2008, for the use of pendimethalin on on Bermuda grass pastures and hayfields to control sandbur species. This program ended on February 19, 2008. *Contact*: Stacey Groce.

On April 16, 2009, for the use of nicosulfuron on Bermuda grass pastures and hayfields to control sandbur species. This program ended on September 16, 2009. *Contact*: Stacey Groce.

On May 23, 2009, for the use of s-metolachlor on sesame to control broadleaf weeds. This program ended on June 7, 2009. *Contact*: Marcel Howard.
Specific exemption: EPA authorized the use of chlorantraniliprole on rice seed to control rice water weevil; October 31, 2008 to June 1, 2009. *Contact*: Marcel Howard.

EPA authorized the use of triflumizole on parsley to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton.

EPA authorized the use of triflumizole on dandelion to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on Swiss chard to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on collards to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on kale to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on kohlrabi to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on mustard greens to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on Chinese napa cabbage to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on coriander (cilantro) to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on broccoli to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of triflumizole on turnip greens to control powdery mildew (*Erysiphe* spp.); January 2, 2009 to January 2, 2010. *Contact*: Libby Pemberton

EPA authorized the use of fenpyroximate in beehives to control varroa mites; February 6, 2009 to September 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of pendimethalin on Bermuda grass

pastures and hayfields to control sandbur species; March 12, 2009 to June 30, 2009. *Contact*: Stacey Groce.

EPA authorized the use of anthraquinone on field and sweet corn seed to repel sandhill cranes; March 12, 2009 to March 11, 2010. *Contact*: Marcel Howard.

EPA authorized the use of dinotefuron on rice to control rice stink bug; June 4, 2009 to October 30, 2009. *Contact*: Libby Pemberton.

EPA authorized the use of fenpyroximate in beehives to control varroa mites; September 30, 2009 to October 1, 2010. *Contact*: Stacey Groce.

Utah

Department of Agriculture
Specific exemption: EPA authorized the use of spirotetramat on dry bulb onions to control thrips, which transmit iris yellow spot virus; May 29, 2009 to September 1, 2009. *Contact*: Andrew Ertman.

Washington

Department of Agriculture
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; October 6, 2008 to September 30, 2009. *Contact*: Stacey Groce.
Specific exemption: EPA authorized the use of sumithrin and piperonyl butoxide in overlap areas around residences and agricultural production areas to control Western Encephalitis mosquito (*Culex tarsalis*); October 6, 2008 to October 6, 2009. The Western Encephalitis mosquito has been implicated in mosquito-borne disease transmission of West Nile virus, a disease which presents a serious threat to public and animal health. *Contact*: Princess Campbell.

EPA authorized the use of linuron on lentils to control mayweed chamomile and prickly lettuce; December 23, 2008 to June 20, 2009. *Contact*: Andrea Conrath.

EPA authorized the use of sulfentrazone on strawberries to control broadleaf; March 15, 2009 to February 28, 2010. *Contact*: Andrew Ertman.

EPA authorized the use of spirotetramat on dry bulb onion to control thrips; July 22, 2009 to September 15, 2009. *Contact*: Andrew Ertman.
Crisis: On May 30, 2009, for the use of anthraquinone on field and sweet corn to repel blackbirds and other bird species. This program ended on May 30, 2009. *Contact*: Marcel Howard.
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; September 30, 2009 to October 1, 2010. *Contact*: Stacey Groce.

Wisconsin

Department of Agriculture, Trade, and Consumer Protection
Crisis: On August 17, 2009, for the use of ortho-phenyl-phenol on potato handling, storage and production areas to control potato ring rot. This program ended on December 31, 2009. *Contact*: Andrea Conrath.
Specific exemption: EPA authorized the use of anthraquinone on field and sweet corn seed to repel sandhill cranes; March 12, 2009 to March 11, 2010. *Contact*: Marcel Howard.

EPA authorized the use of mancozeb on ginseng to control *Phytophthora* blight; May 22, 2009 to October 31, 2009. *Contact*: Stacey Groce.

EPA authorized the use of zoxamide on ginseng to control *Phytophthora* blight; May 22, 2009 to October 31, 2009. *Contact*: Stacey Groce.

EPA authorized the use of spirotetramat on dry bulb onion to control thrips, which transmit iris yellow spot virus; May 29, 2009 to September 15, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 20, 2009 to December 15, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of abamectin on dry bulb onions to control thrips; July 20, 2009 to September 15, 2009. *Contact*: Andrew Ertman.

EPA authorized the use of chlorpyrifos on ginseng to control root-damaging insect larvae such as cutworms, grubs, rootworms, and wireworms; August 27, 2009 to November 15, 2009. *Contact*: Stacey Groce.
Crisis: On June 27, 2009, for the use of avermectin on dry bulb onion to control thrips, which transmit iris yellow spot virus. This program ended on July 12, 2009. *Contact*: Andrew Ertman.
Specific exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mites; July 8, 2009 to September 30, 2009. *Contact*: Stacey Groce.

Wyoming

Department of Agriculture
Crisis: On May 1, 2009, for the use of fenpyroximate in beehives to control varroa mites. This program ended on May 13, 2009. *Contact*: Stacey Groce.
Specific exemption: EPA authorized the use of fenpyroximate in honeybee hives to control varroa mites; May 14, 2009 to September 30, 2009. *Contact*: Stacey Groce.

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspector Service
Quarantine: EPA authorized the use of methyl bromide on imported avocados, bananas, opuntia, plantains, leafy vegetables not on Q Label (including Brassica Leafy), cucurbit vegetables not on Q Label, root and tuber vegetables not on the Q Label, dasheen, edible podded legume vegetables, fresh herbs and spices, ivy gourd, kiwi fruit, longan, lychee fruit, fresh and dried mint, pointed gourd, rambutan, cucurbit seeds, edible (shelled/unshelled), blackberries, raspberries, and plumcot/pluot to control various plant pests not currently established in the United States; This program ended on March 3, 2010. *Contact*: Libby Pemberton.
Specific exemption: EPA authorized the use of diphacinone in the habitat of federally protected species, in Egmont Bay, Tampa Bay, Florida to control invasive rodent predators which feed upon eggs and hatchlings of endangered and threatened bird and turtle species; May 15, 2009 to May 15, 2012. *Contact*: Princess Campbell.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 31, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–22333 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9197–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1696.06; Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers; 40 CFR part 79, subpart F; was approved on 08/05/2010; OMB Number 2060–0297; expires on 08/31/2013; Approved without change.

EPA ICR Number 2366.02; Stormwater Management Including Discharges From Developed Sites Questionnaires (Revision); was approved on 08/06/2010; OMB Number 2040–0282; expires on 08/31/2013; Approved with change.

EPA ICR Number 2228.03; Reformulated Gasoline Commingling Provisions; 40 CFR 80.78; was approved on 08/13/2010; OMB Number 2060–0587; expires on 08/31/2013; Approved without change.

EPA ICR Number 2322.01; Critical Public Information Needs during Drinking Water Emergencies (New); was approved on 08/16/2010; OMB Number 2080–0079; expires on 08/31/2013; Approved without change.

EPA ICR Number 2243.06; Procedures for Implementing the National Environmental Policy Act (NEPA) and Assessing the Environmental Effects Abroad of EPA Actions (Renewal); 40 CFR 6.301; was approved on 08/18/2010; OMB Number 2020–0033; expires on 08/31/2013; Approved without change.

EPA ICR Number 1058.10; NSPS for Incinerators; 40 CFR part 60, subparts A and E; was approved on 08/20/2010; OMB Number 2060–0040; expires on 08/31/2013; Approved without change.

EPA ICR Number 1975.07; NESHAP for Stationary Reciprocating Internal Combustion Engines; 40 CFR part 63, subparts A and ZZZZ; was approved on 08/23/2010; OMB Number 2060–0548; expires on 08/31/2013; Approved with change.

EPA ICR Number 2173.04; EPA's Green Power Partnership and Combined Heat and Power Partnership (Change); was approved on 08/26/2010; OMB Number 2060–0578; expires on 06/30/2012; Approved with change.

Comment Filed

EPA ICR Number 2203.03; Amendments to the Protocol Gas Verification Program, and Minimum Competency Requirements for Air Emission Testing; in 40 CFR parts 72 and 75; OMB filed comment on 08/20/2010.

Dated: September 1, 2010.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2010–22326 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9197–7]

Best Management Practices for Unused Pharmaceuticals at Health Care Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is requesting public comments on a draft guidance document entitled, *Best Management Practices for Unused Pharmaceuticals at Health Care Facilities.* The guidance is targeted at hospitals, medical clinics, doctors' offices, long-term care facilities and veterinary facilities. EPA expects that this document will help reduce the amount of pharmaceuticals that are discharged to water bodies.

DATES: EPA requests comments on or before November 8, 2010. Comments received after this date may not be incorporated into the final guidance document.

ADDRESSES: EPA prefers receiving comments by e-mail. Please send e-mail comments to *unusedpharms@epa.gov* and include your name and organizational affiliation, if any. You may also send comments by postal mail to Meghan Hessenauer, Engineering and Analysis Division (4303T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Meghan Hessenauer, Engineering and Analysis Division, telephone: 202–566–1040; e-mail: *hessenauer.meghan@epa.gov.*

SUPPLEMENTARY INFORMATION: Pharmaceuticals are being discovered in our Nation's waters at very low concentrations. EPA has been studying unused pharmaceutical disposal practices at health care facilities, prompted by the concern that large amounts of pharmaceuticals are being flushed or disposed of down the drain, ultimately ending up in rivers, streams and coastal waters.

The Agency has drafted a guidance document for health care facilities, which describes:

- Techniques for reducing or avoiding pharmaceutical waste;
- Practices for identifying and managing types of unused pharmaceuticals; and
- Applicable disposal regulations.

The guidance is targeted at hospitals, medical clinics, doctors' offices, long-term care facilities and veterinary facilities. EPA expects that this document will help reduce the amount of pharmaceuticals that are discharged to water bodies.

The document is available on EPA's Web site at *http://water.epa.gov/scitech/wastetech/guide/unusedpharms_index.cfm.*

EPA has visited many facilities and consulted with organizations in the health care industry, as well as federal, state and local government agencies. EPA continues to solicit recommendations from a wide range of stakeholders and welcomes comments on the draft document. We plan to publish a final version of the document in late 2010.

Dated: September 1, 2010.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. 2010–22325 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9198–4; Docket ID No. EPA–HQ–ORD–2008–0663]

ICLUS v1.3 User's Manual: ArcGIS Tools and Datasets for Modeling U.S. Housing Density Growth

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of a final Geographic Information System (GIS) tool and final user's guide titled, "ICLUS v1.3 User's Manual: ArcGIS Tools and Datasets for Modeling U.S. Housing Density Growth" (EPA/600/R–09/143F). The tool and its documentation were prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. The GIS tool can be used to modify land use scenarios for the conterminous United States. ICLUS stands for Integrated Climate and Land Use Scenarios, a project which is described in the 2009 EPA Report, "Land-Use Scenarios: National-Scale Housing-Density Scenarios Consistent with Climate Change Storylines." These scenarios are broadly consistent with global-scale, peer-reviewed storylines of population

growth and economic development, which are used by climate change modelers to develop projections of future climate.

DATES: The GIS tool and documentation will be available on or about September 8, 2010.

ADDRESSES: "ICLUS v1.3 User's Manual: ArcGIS Tools and Datasets for Modeling U.S. Housing Density Growth" and the geoprocessing tools will be available to download via an ftp site on the NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies of the User's Manual are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the final document title, "ICLUS v1.3 User's Manual: ArcGIS Tools and Datasets for Modeling U.S. Housing Density Growth" (EPA/600/R–09/143F).

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Britta Bierwagen, NCEA; telephone: 703–347–8613; facsimile: 703–347–8692; or e-mail: *bierwagen.britta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the GIS Tool and Document

The GIS tool and its documentation, "ICLUS v1.3 User's Manual: ArcGIS Tools and Datasets for Modeling U.S. Housing Density Growth" enables users to run a spatially explicit allocation model with the population projections developed for the ICLUS project. Users can modify the spatial allocation of housing density across the landscape to customize scenarios of future development patterns. The data provided consist of five population scenarios by county for the conterminous U.S. and are available in 5-year increments from 2000 to 2100. The population projections for each U.S. county drive the production of new housing units, which are allocated in response to the spatial pattern of previous growth (*e.g.,* 1990 to 2000), transportation infrastructure, and other basic assumptions. The housing allocation model recomputes housing density in 5-year time steps from the year 2000 to 2100.

The GIS tool allows users to:

- Access the county-level ICLUS population projections;
- Customize housing density patterns by altering household size and travel time assumptions;
- Classify housing density into generalized categories;
- Estimate future impervious surface based on a housing density; and
- Summarize levels of imperviousness by housing density classes.

In December 2009, the draft GIS tools and user's guide were released for independent external review and a **Federal Register** notice, published December 8, 2009, announced the start of a public review and comment period. These final GIS tools and user's guide address comments received from both the external peer review and the public.

Dated: September 1, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–22332 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9198–3]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board; Polycyclic Aromatic Hydrocarbon (PAH) Mixtures Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Polycyclic Aromatic Hydrocarbon (PAH) Mixtures Review Panel to discuss its draft report on EPA's *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures.*

DATES: The SAB PAH Mixtures Review Panel will conduct a public teleconference on September 30, 2010. The teleconference will begin at 1 p.m. and end at 5 p.m. (Eastern Time).

ADDRESSES: The teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), via telephone at (202) 564–2050 or e-mail at *yeow.aaron@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the SAB PAH Mixtures Review Panel will hold a public teleconference to discuss its draft report on EPA's *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures.* The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Integrated Risk Information System (IRIS) is an electronic database containing descriptive and quantitative toxicological information on human health effects that may result from chronic exposure to various substances in the environment. This information supports human health risk assessments and includes hazard identification and dose-response data and derivations of oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for noncancer effects and oral slope factors and oral and inhalation unit risks for cancer effects. IRIS is prepared and maintained by EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development (ORD). NCEA's IRIS Program has developed a draft technical document entitled, *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures,* for estimating cancer risk from exposure to PAH mixtures. ORD has requested that the Science Advisory Board (SAB) conduct a review of this draft document.

The SAB PAH Mixtures Review Panel held a public teleconference on June 8, 2010 and a public meeting on June 21–23, 2010 to review EPA's *Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures* [*see* **Federal Register** notice dated May 18, 2010 (*75 FR 27777–27778*)]. Materials from the June 8, 2010 teleconference and June 21–23, 2010 meeting are posted on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Human%20Health%20PAH%20Mixtures?OpenDocument.*

The purpose of the upcoming teleconference is for the PAH Mixtures Review Panel to discuss its draft report. The Panel's draft report will be submitted to the chartered SAB for their consideration and approval. A meeting agenda and the draft SAB review report will be posted at the above noted SAB Web site prior to the meeting.

Availability of Meeting Materials: Agendas and materials in support of the

teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference. For technical questions and information concerning EPA's draft document, please contact Dr. Lynn Flowers at (703) 347–8537, or *flowers.lynn@epa.gov*.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail) at the contact information noted above by September 23, 2010 to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by September 23, 2010 so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. Submitters are requested to provide versions of signed documents, submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov*. To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: August 31, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2010–22328 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8843–3]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 8, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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 at the end of the pesticide petition summary of interest.

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

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

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

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 0E7731.* (EPA–HQ–OPP–2010–0659). ISK BioSciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio 44077, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide pyriofenone, (5-chloro-2-methoxy-4-methyl-3-pyridinyl)(2,3,4-trimethoxy-6-methylphenyl) methanone, in or on grape at 0.2 parts per million (ppm). A practical analytical method for pyriofenone using liquid chromatography-mass spectrometry/MS (LC/MS/MS) is available for analysis of grapes. This method has been confirmed through independent laboratory validation and is available for enforcement purposes. Contact: Heather Garvie, (703) 308–0034, e-mail address: *garvie.heather@epa.gov.*

2. *PP 0E7735.* (EPA–HQ–OPP–2010–0583). Interregional Research Project Number 4 (IR-4) Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, proposes to establish tolerances in 40 CFR part 180 for residues of the fungicide tetraconazole, 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxyl)propyl]-1 *H*-1,2,4-triazole, in or on small fruit vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 0.20 ppm; and low growing berry, subgroup 13-07G at 0.25 ppm. Adequate enforcement methodology (capillary gas chromatography with electron capture detector (GC/ECD)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350. Contact: Sidney Jackson, (703) 305–7610, e-mail address: *jackson.sidney@epa.gov.*

3. *PP 0E7743.* (EPA–HQ–OPP–2010–0621). Interregional Research Project Number 4 (IR-4) Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, proposes to establish tolerances in 40 CFR part 180 for residues of the fungicide metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1 *H* -1,2,4-triazol-1-ylmethyl) cyclopentanol), measured as the sum of *cis*- and *trans*-isomers, in or on bushberry subgroup 13-07B at 0.35 ppm; and tuberous and

corm vegetable subgroup 1C at 0.02 ppm. Independently validated analytical methods have been submitted for analyzing parent metconazole residues with appropriate sensitivity for crops and processed commodities for which a tolerance is being requested. Contact: Andrew Ertman, (703) 308–9367, e-mail address: *ertman.andrew@epa.gov*.

4. *PP 0F7711*. (EPA–HQ–OPP–2010–0425). Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide penflufen, (1*H*-pyrazole-4-carboxamide, *N*-[2-(1,3-dimethylbutyl)phenyl]-5-fluoro-1,3-dimethyl-), in or on alfalfa, forage and hay at 0.01 ppm; cotton, gin byproducts at 0.01 ppm; canola, borage, crambe, cuphea, echium, flax seed, gold of pleasure, hare's ear mustard, lesquerella, lunaria. meadowfoam, milkweed, mustard seed, oil radish, poppy seed, rapeseed, sesame, sweet rocket, calendula, castor oil plant, Chinese tallowtree, cottonseed, euphorbia, evening primrose, jojoba, niger seed, rose hip, safflower, stokes aster, sunflower, tallowwood, tea oil plant, and vernonia at 0.01 ppm; grain, cereal, group 15 at 0.01 ppm; grain, cereal, forage, fodder and straw, group 16 at 0.01 ppm; vegetable, legume, group 06 at 0.01 ppm; vegetable, foliage of legume, group 07 at 0.01 ppm; and vegetable, tuberous and corm, subgroup 01C at 0.01 ppm. Tolerances are being proposed in primary crops solely for penflufen. The analytical method involves solvent extraction, filtration, and addition of an isotopically labeled internal standard followed by acid hydrolysis. Quantitation is by high performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC/MS/MS). Contact: Marianne Lewis, (703) 308–8043, e-mail address: *lewis.marianne@epa.gov*.

Amended Tolerance

PP 0E7735. (EPA–HQ–OPP–2010–0583). Interregional Research Project Number 4 (IR-4) Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, proposes to delete the existing tolerance in 40 CFR 180.557 for residues of the fungicide tetraconazole, 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxyl)propyl]-1*H*-1,2,4-triazole, in or on grape at 0.20 ppm since grape is included in the proposed subgroup 13-07F in 2. under "New Tolerance". Contact: Sidney Jackson, (703) 305–7610, e-mail address: *jackson.sidney@epa.gov*.

New Tolerance Exemption

PP 0F7687. (EPA–HQ–OPP–2004–0144). Stehekin, LLC, 1012 Good Lander Drive, WA 98942, proposes to amend 40 CFR 180.920 to establish an exemption from the requirement of a tolerance for residues of 1-naphthaleneacetic acid, potassium and sodium salts (NAA) in or on potato. The analytical method for NAA was submitted to the Agency under EPA MRID number 445554–03 for the detection and measurement of the pesticide residues. Contact: Janet Whitehurst, (703) 305–6129, e-mail address: *whitehurst.janet@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–22331 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0711; FRL–9198–5]

Proposed Approval of the Central Characterization Project's Transuranic Waste Characterization Program at the Hanford Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing the availability of, and soliciting public comments for 45 days on, the proposed approval of the radioactive contact-handled (CH) transuranic (TRU) waste characterization program implemented by the Central Characterization Project (CCP) at the Hanford Site in Richland, Washington. This waste is intended for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico.

In accordance with the WIPP Compliance Criteria, EPA evaluated the characterization of TRU debris waste from Hanford-CCP during an inspection conducted on April 27–29, 2010. Using the systems and processes developed as part of the U.S. Department of Energy's (DOE's) Carlsbad Field Office (CBFO) program, EPA verified whether DOE could adequately characterize CH TRU debris waste, consistent with the Compliance Criteria. The results of EPA's evaluation of Hanford-CCP's waste characterization program and its proposed approval are described in the Agency's inspection report, which is available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approval. As required by the 40 CFR 194.8, at the end of a 45-day comment period EPA will evaluate public comments received, and if appropriate, finalize the reports responding to the relevant public comments and issue a final report and approval letter to DOE.

DATES: Comments must be received on or before October 25, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0711, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* to *a-and-r-docket@epa.gov*.
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2010–0711. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov.* As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Rajani Joglekar or Ed Feltcorn, Radiation Protection Division, Center for Waste Management and Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *joglekar.rajani@epa.gov* or *feltcorn.ed@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. 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 in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. Background

DOE is developing the WIPP, near Carlsbad in southeastern New Mexico, as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. No. 102–579), as amended (Pub. L. No. 104–201), TRU waste consists of materials with radionuclides that have atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

TRU waste is itself divided into two categories, based on its level of radioactivity. Contact-handled TRU waste accounts for about 97 percent of the volume of TRU waste currently destined for the WIPP. It is packaged in 55-gallon metal drums or in metal boxes and can be handled under controlled conditions without any shielding beyond the container itself. The maximum radiation dose at the surface of a CH TRU waste container is 200 millirems per hour. CH waste primarily emits alpha particles that are easily shielded by a sheet of paper or the outer layer of a person's skin.

Remote-handled (RH) TRU waste emits more radiation than CH TRU waste and must therefore be both handled and transported in specially shielded containers. Surface radiation levels of unshielded containers of remote-handled transuranic waste exceed 200 millirems per hour. RH waste primarily emits gamma radiation, which is very penetrating and requires concrete, lead, or steel to block it.

On May 13, 1998, EPA issued a final certification of compliance for the WIPP facility. The final rule was published in the **Federal Register** on May 18, 1998 (63 FR 27354). EPA officially recertified WIPP on March 29, 2006 (71 FR 18015). Both the certification and recertification determined that WIPP complies with the Agency's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C, and is therefore safe to contain TRU waste.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in 194.8 (revised July 2004).

Condition 3 of the WIPP Certification Decision requires EPA to conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. EPA's inspection and approval process gives EPA (a) Discretion in establishing technical priorities, (b) the ability to accommodate variation in the site's waste characterization capabilities, and (c) flexibility in scheduling site waste characterization inspections.

As described in Section 194.8(b), EPA's baseline inspections evaluate each waste characterization process component (equipment, procedures, and personnel training/experience) for its adequacy and appropriateness in characterizing TRU waste destined for disposal at WIPP. During an inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability

to comply with the regulatory limits and tracking requirements under 194.24. A baseline inspection may describe any limitations on approved waste streams or waste characterization processes [§ 194.8(b)(2)(iii)]. In addition, a baseline inspection approval must specify what subsequent waste characterization program changes or expansion should be reported to EPA [§ 194.8(b)(4)]. The Agency is required to assign Tier 1 (T1) and Tier 2 (T2) designations to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site notify EPA of proposed changes to the approved components of an individual waste characterization process (such as radioassay equipment or personnel), and that EPA approve the change before it can be implemented. A waste characterization element with a T2 designation allows the site to implement changes to the approved components of individual waste characterization processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of 194.24(h). In addition to the follow-up inspections, if warranted, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of 194.24(h).

The site inspection and approval process outlined in 194.8 requires EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the waste characterization processes EPA inspected at the site, as well as their compliance with 194.24 requirements.

III. Proposed Baseline Compliance Decision

EPA conducted Baseline Inspection No. EPA–Hanford-CCP–CH–04.10–8 of the waste characterization program for CH TRU waste at the Hanford site on April 27–29, 2010. In accordance with the provisions of 40 CFR 194.8(b), EPA evaluated the site's program to characterize wastes proposed for disposal at the Waste Isolation Pilot Plant (WIPP). EPA is seeking public comment on the proposed approval which, when finalized, will allow the Hanford-CCP to characterize and dispose of CH TRU debris waste at the WIPP.

The EPA inspection team identified five concerns, all of which required a response. EPA Inspection Issue Tracking Forms (*see* Attachments C.1 through C.4 and C.6 of the accompanying inspection report) document these concerns. The EPA inspection team also identified one finding (Hanford-CCP–CH–VE–10–005F, Final, see Attachment C.5 of the accompanying inspection report). Personnel from Hanford-CCP and Carlsbad Field Office (CBFO) provided information to resolve these concerns to EPA after the inspection. The information provided to EPA adequately addressed the finding and concerns. EPA considers the one finding and the five concerns related to Hanford-CCP to be resolved, and there are no open issues resulting from this inspection.

The EPA inspection team determined that the Hanford-CCP waste characterization program for retrievably-stored CH TRU debris waste was technically adequate. EPA, therefore, is proposing to approve the Hanford-CCP CH TRU waste characterization program in the configuration observed during this inspection and described in this report and the attached checklists (Attachments A.1 through A.5). This approval includes the following:

(1) The acceptable knowledge (AK) process for CH retrievably-stored TRU debris wastes.

(2) The Canberra Gamma Energy Analysis (GEA) systems (units GEA–A and GEA–B) for assaying CH TRU wastes.

(3) The nondestructive examination (NDE) process of real-time radiography (RTR) for CH TRU debris wastes.

(4) The NDE process of visual examination (VE) for CH TRU debris waste.

(5) The WIPP Waste Data System (WDS) process for tracking waste contents of CH TRU wastes.

As part of Item #3 above, when estimating observable, free liquid in a CH container, if a mathematical equation is used to calculate the quantities of liquid, the mathematical equation used and resulting calculation must be recorded. Auditable records thus are available to verify estimated quantities of liquid in a container. Hanford-CCP must report any Tier 1 (T1) or Tier 2 (T2) changes to the Hanford-CCP waste characterization activities from the date of the baseline inspection according to Table 1, below. Reference to the specific section of this report where each T1 or T2 change is discussed is included in parentheses following the change. Table 1 in the accompanying inspection report closely follows the format used in previous CH baseline approval reports. Footnote b in Tables 1 and 10 specifies that "substantive changes" are changes with the potential to impact the site's waste characterization activities under 40 CFR 194.24 or the documentation thereof, excluding changes that are solely related to environmental safety and health (ES&H), nuclear safety, or the Resource Conservation and Recovery Act (RCRA), or that are editorial in nature.

TABLE 1—TIERING OF CH TRU WC PROCESSES IMPLEMENTED BY HANFORD–CCP, BASED ON APRIL 27–29, 2010 BASELINE INSPECTION

Process elements	Hanford-CCP T1 changes needing EPA review and approval	Hanford-CCP T2 changes [a]
Acceptable Knowledge (AK).	Implementation of load management (AK 13). Implementation of AK for wastes other than retrievably-stored debris (i.e., retrievably-stored soil/gravel and/or solids) (AK 1).	Notification to EPA upon completion of new versions or updates/substantive changes [b] of the following: —Modification of CCP–TP–005, Revision 18 (AK 4); —Availability of modifications to the AKSR (AK 5); —Availability of all final WSPF with related attachments (AK 9); —Availability of all AK Accuracy Reports (AK 12); —Availability of successful training records (AK 10); —Availability of the AK–NDA memorandum (AK 14).
Non Destructive Assay (NDA).	New equipment or physical modifications to approved equipment [c] (NDA 1).	Notification to EPA upon completion of changes to software for approved equipment, operating range(s), and site procedures that require CBFO approval (NDA 2).

TABLE 1—TIERING OF CH TRU WC PROCESSES IMPLEMENTED BY HANFORD–CCP, BASED ON APRIL 27–29, 2010 BASELINE INSPECTION—Continued

Process elements	Hanford-CCP T1 changes needing EPA review and approval	Hanford-CCP T2 changes [a]
	Extension or changes to approved calibration range for approved equipment (NDA 2).	
Real-Time Radiography (RTR).	Implementation of a different type of RTR equipment (RTR 2).	Notification to EPA upon the following: —Modification [c] to approved equipment, RTR units A and B (RTR 2); —Completion of changes to site RTR procedures requiring CBFO approvals (RTR 2); —Addition of new SCG to the RTR processes that are subject to this approval (RTR 2).
Visual Examination (VE).	Performance of VE by any method other than using two trained operators to perform actual VE at the time of packaging (VE 1).	Notification to EPA upon the following: —Completion of changes to site VE procedure(s) requiring CBFO approvals (VE 2); —Addition of new SCG to the VE processes that are subject to this approval (VE 2).
Waste Data System (WDS).	There are no T1 changes at this time ...	Notification to EPA upon the following: —Completion of changes to WDS procedure(s) requiring CBFO approvals (WDS 2); —Changes to the Excel spreadsheet titled WDS Master Template.xls, Revision 2, Addendum #2, SCO #1065 (WDS 2).

[a] Upon receiving EPA approval, Hanford-CCP will report all T2 changes to EPA at the end of each fiscal quarter.
[b] "Substantive changes" are changes with the potential to impact the site's waste characterization activities or documentation thereof, excluding changes that are solely related to ES&H, nuclear safety, or RCRA, or that are editorial in nature.
[c] Modifications to approved equipment include all changes with the potential to affect NDA data relative to waste isolation and exclude minor changes, such as the addition of safety-related equipment.

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of the Agency's inspection of Hanford-CCP in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the proposed approval decision, as described in the inspection report. EPA will accept public comment on this notice and supplemental information as described in Section 1.B. above. EPA will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report, both of which will be posted on the WIPP Web site.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in Albuquerque, Carlsbad, and Santa Fe, New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: September 1, 2010.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2010–22335 Filed 9–7–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 31, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 8, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0185.

Title: Section 73.3613, Filing of Contracts.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; Not–for–profit institutions.

Number of Respondents and Responses: 2,300 respondents and 2,300 responses.

Estimated Hours per Response: 0.25 to 0.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 950 hours.

Total Annual Cost: $120,000.

Privacy Impact Assessment: No impact(s).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required for this collection of information.

Needs and Uses: 47 CFR 73.3613 requires each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall file with the FCC copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 30 days of execution thereof:

(a) Network service: Network affiliation contracts between stations and networks will be reduced to writing and filed as follows:

(1) All network affiliation contracts, agreements, or understandings between a TV broadcast or low power TV station and a national network. For the purposes of this paragraph the term network means any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation.

(2) Each such filing on or after May 1, 1969, initially shall consist of a written instrument containing all of the terms and conditions of such contract, agreement or understanding without reference to any other paper or document by incorporation or otherwise. Subsequent filings may simply set forth renewal, amendment or change, as the case may be, of a particular contract previously filed in accordance herewith.

(3) The FCC shall also be notified of the cancellation or termination of network affiliations, contracts for which are required to be filed by this section.

(b) Ownership or control: Contracts, instruments or documents relating to the present or future ownership or control of the licensee or permittee or of the licensee's or permittee's stock, rights or interests therein, or relating to changes in such ownership or control shall include but are not limited to the following:

(1) Articles of partnership, association, and incorporation, and changes in such instruments;

(2) Bylaws, and any instruments effecting changes in such bylaws;

(3) Any agreement, document or instrument providing for the assignment of a license or permit, or affecting, directly or indirectly, the ownership or voting rights of the licensee's or permittee's stock (common or preferred, voting or nonvoting), such as:

(i) Agreements for transfer of stock;

(ii) Instruments for the issuance of new stock; or

(iii) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation. Pledges, trust agreements, options to purchase stock and other executory agreements are required to be filed. However, trust agreements or abstracts thereof are not required to be filed, unless requested specifically by the FCC. Should the FCC request an abstract of the trust agreement in lieu of the trust agreement, the licensee or permittee will submit the following information concerning the trust:

(A) Name of trust;

(B) Duration of trust;

(C) Number of shares of stock owned;

(D) Name of beneficial owner of stock;

(E) Name of record owner of stock;

(F) Name of the party or parties who have the power to vote or control the vote of the shares; and

(G) Any conditions on the powers of voting the stock or any unusual characteristics of the trust.

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of 1 year, and all proxies, whether or not running for a period of 1 year, given without full and detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee within 30 days after the stockholders' meeting in which the stock covered by such proxies has been voted. However, when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock. When the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are not officers or directors or do not hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.

(5) Mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation, such as those affecting voting rights, specifying or limiting the amount of dividends payable, the purchase of new equipment, or the maintenance of current assets.

(6) Any agreement reflecting a change in the officers, directors or stockholders of a corporation, other than the licensee or permittee, having an interest, direct or indirect, in the licensee or permittee as specified by §73.3615.

(7) Agreements providing for the assignment of a license or permit or agreements for the transfer of stock filed in accordance with FCC application Forms 314, 315, 316 need not be resubmitted pursuant to the terms of this rule provision.

(c) Personnel: (1) Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee; station management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

(2) The following contracts, agreements, or understandings need not be filed: Agreements with persons regularly employed as general or station managers or salesmen; contracts with program managers or program personnel; contracts with attorneys, accountants or consulting radio engineers; contracts with performers; contracts with station representatives; contracts with labor unions; or any similar agreements.

(d)(1) Time brokerage agreements (also known as local marketing agreements): Time brokerage agreements involving radio stations where the licensee (including all parties under common ownership) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in §73.3555(a), and more than 15 percent of the time of the brokered station, on a weekly basis is brokered by that licensee; time brokerage agreements involving television stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as defined in the local television multiple ownership rule contained in §73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under §73.3555 Note 2, paragraph (i). Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(2) Joint sales agreements: Joint sales agreements involving radio stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in §73.3555(a), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–22250 Filed 9–7–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 2010.

A. Federal Reserve Bank of Chicago, (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Zaring Group Holdings LLC., Riverwoods, Illinois, to become a bank holding company by acquiring 75.1 percent of the voting shares of First Suburban Bancorp Corporation, Maywood, Illinois, and thereby indirectly acquire First Suburban National Bank, Maywood, Illinois.

2. Hometown Community Bancorp, Inc., and Hometown Community Bancorp, Inc. Employee Stock Ownership Plan and Trust, both located in Morton, Illinois, to merge with CSBC Financial Corporation, Cropsey, Illinois, and thereby indirectly acquire Citizens State Bank of Cropsey, Cropsey, Illinois.

Board of Governors of the Federal Reserve System, September 2, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–22310 Filed 9–7–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, October 13 from 9 a.m. until 5 p.m. and Thursday, October 14, 2010 from 9 a.m. until 4 p.m. CFSAC Subcommittees will hold scientific review sessions on Tuesday, October 12 from 8:30 a.m. until 5 p.m.

ADDRESSES: Department of Health and Human Services; Room 800, Hubert H. Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201. For a map and directions to the Hubert H. Humphrey building, please visit *http://www.hhs.gov/about/hhhmap.html.*

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, DrPH; Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services; 200 Independence Avenue, SW., Hubert Humphrey Building, Room 712E; Washington, DC 20201. Please direct all inquiries to *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The Committee was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) The current state of the knowledge and research about the

epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about advances in chronic fatigue syndrome.

The agenda for this meeting is being developed. The agenda will be posted on the CFSAC Web site, *http://www.hhs.gov/advcomcfs,* when it is finalized. The meeting will be broadcast over the Internet as a real-time streaming video. It also will be recorded and archived on the CFSAC Web site for on demand viewing.

CFSAC Subcommittees will convene scientific review sessions on Tuesday, October 12. The purpose of these sessions is to update the latest developments in etiology, natural history, clinical trials, and related areas for chronic fatigue syndrome. The public is welcome to attend these sessions, which are not a formal part of the Advisory Committee meeting. These sessions will be broadcast over the Internet as a real-time streaming video. It also will be recorded and archived on the CFSAC Web site for on demand viewing. An agenda will be posted on the CFSAC Web site when it becomes available.

Public attendance at the meeting is limited to space available. Individuals must provide a government-issued photo ID for entry into the building where the meeting is scheduled to be held. Those attending the meeting will need to sign-in prior to entering the meeting room. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at *cfsac@hhs.gov* in advance.

Members of the public will have the opportunity to provide comment at the October 13–14 meeting if pre-registered. Individuals who wish to address the Committee during the public comment session must pre-register by Friday, September 17, 2010, via e-mail at *cfsac@hhs.gov.* Time slots for public comment will be available on a first-come, first-served basis. Public comment will be limited to five minutes per speaker; no exceptions will be made. Individuals registering for public comment should submit a copy of their testimony in advance to *cfsac@hhs.gov,* prior to the close of business on Friday, September 17, 2010.

Members of the public who wish to have printed material distributed to CFSAC members for review should submit one copy of the material to the Executive Secretary, at *cfsac@hhs.gov,* prior to close of business on September 17, 2010. Submissions are limited to five typewritten pages. Any written testimony submitted after this date will be available for inspection on-site and will be posted to the Web site after the meeting.

If you do not submit your written testimony prior to the close of business Friday, September 17, 2010, you may bring a copy of your written testimony to the meeting and present it to the CFSAC Executive Secretary. Your testimony will be included in a notebook that will be available for viewing by the public on a table at the back of the meeting room.

Please ensure that written testimony does not include any personal information including your personal mailing address and that it includes only your name, if you wish to be identified. If you wish to remain anonymous, please notify the CFSAC Executive Secretary upon submission of the materials to *cfsac@hhs.gov.*

Dated: August 31, 2010.

Wanda K. Jones,

Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 2010–22393 Filed 9–7–10; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0285]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters." The guidance was developed as a special control to support the reclassification of PTCA catheters, other than cutting/scoring PTCA catheters, from class III (premarket approval) into class II (special controls). This guidance describes a means by which PTCA catheters, other than cutting/scoring PTCA catheters, may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule that codifies the reclassification of this device type from class III (premarket approval) into class II (special controls).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kathryn O'Callaghan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6349.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document was developed as a special control guidance to support the reclassification of PTCA catheters, other than cutting/scoring PTCA catheters, into class II (special controls). The device is intended for balloon dilatation of a hemodynamically significant coronary artery or bypass graft stenosis in patients evidencing coronary ischemia for the purpose of improving myocardial perfusion, treatment of acute myocardial infarction, treatment of in-stent restenosis and/or post-deployment stent expansion. Cutting/scoring PTCA catheters (Product Code: NWX) remain in class III and are subject to premarket

approval (PMA) requirements (section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)).

On December 4, 2000, at a public meeting of FDA's Circulatory System Devices Panel (the Panel), the Panel recommended that PTCA catheters, other than cutting/scoring PTCA catheters and standard PTCA catheters for the treatment of in-stent restenosis and/or post-deployment stent expansion, be reclassified from class III to class II, when indicated for balloon dilatation of a hemodynamically significant coronary artery or bypass graft stenosis in patients evidencing coronary ischemia for the purpose of improving myocardial perfusion, or for treatment of acute myocardial infarction. The Panel recommended a guidance document, labeling, and postmarket surveillance as special controls.

FDA considered the Panel's recommendations and, on May 30, 2008, published a proposed rule to reclassify certain PTCA catheters, including standard PTCA catheters for the treatment of in-stent restenosis and/or post-deployment stent expansion, but not cutting/scoring PTCA catheters, into class II. In addition, FDA issued a draft class II special controls guidance document entitled "Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters" to support the proposed reclassification.

Following publication of the draft guidance, two sets of comments on the guidance were submitted to the FDA. The comments received sought minor clarifications on several pre-clinical testing recommendations, including biocompatibility, shelf-life and performance testing. We considered the suggestions and made appropriate revisions. In addition, the guidance was updated to include more specific recommendations regarding evaluation of coating integrity. FDA is now identifying the guidance document entitled "Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters" as the guidance document that will serve as the special control for this device type.

The guidance document provides a means by which PTCA catheters, other than cutting/scoring PTCA catheters, may comply with the requirement of special controls for this class II device. Following the effective date of the final reclassification rule, any firm submitting a premarket notification (510(k)) for a PTCA catheter will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance document or in some other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on standard PTCA catheters. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive "Class II Special Controls Guidance Document for Certain Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters" you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number (1608) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, Subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information under CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 820 have been approved under 0910–0073; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 2010.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–22303 Filed 9–7–10; 8:45 am]

BILLING CODE 4160–01–S

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, Selected Topics in Transfusion Medicine.

Date: September 27–28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892. (301) 435–1233. *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pain and Chemosensory Systems.

Date: September 29–30, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892. (301) 408–9664. *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Dermatology.

Date: October 1, 2010.

Time: 2 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: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892. 301–496–8551. *ingrahamrh@mail.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Neurotechnology Study Section.

Date: October 4, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology 3.

Date: October 4, 2010.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892. 301–408–9129. *lewisdeb@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Molecular Neurogenetics Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5203, MSC 7812, Bethesda, MD 20892. (301) 435–0902. *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology Overflow.

Date: October 12–13, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation: Neurotechnology.

Date: October 13, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies: R03s, R15s, and R21s.

Date: October 14, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892. (301) 435–1712. *ryansj@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function E Study Section.

Date: October 14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892. (301) 435–1747. *rosenzweign@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Maqsood A Wani, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892. 301–435–2270. *wanimaqs@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Tina McIntyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892. 301–594–6375. *mcintyrt@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Acute Neural Injury and Epilepsy Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 237–9838. *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development Methods of In Vivo Imaging and Bioengineering Research.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409. *shabestb@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Molecular Oncogenesis Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892. 301–435–1718. *sizemoren@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th and K Streets, NW., Washington, DC 20006.

Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892. 301–435–1022. *balasundaramd@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. 301–435–2306. *boundst@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects—1 Study Section.

Date: October 14, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892. 301–594–6830. *gerendad@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052. *laip@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Therapeutic Approaches to Genetic Diseases.

Date: October 14, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael K. Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892. (301) 435–1147. *mschmidt@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—B Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Magnificent Mile Downtown Chicago, 165 E. Ontario Street, Chicago, IL 60611.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892. 301–435–1223. *haydenb@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: David J. Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892. 301–435–1038. *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: SAT and BTSS Study Sections.

Date: October 14, 2010.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. (301) 435–2204. *matusr@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: September 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22311 Filed 9–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of a Meeting of a Working Group of the NIH Blue Ribbon Panel

The purpose of this notice is to inform the public about a meeting of the NIH Blue Ribbon Panel to Advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories at the Boston University Medical Campus. The meeting will be held Tuesday, October 5, 2010 at the Mainstage at Roxbury Community College, 1234 Columbus Avenue, Roxbury, MA from approximately 6:30 p.m. to 10 p.m.

This public meeting is being held to provide an update to the community on the status and proposed approach of the risk assessment for the BUMC NEIDL. The meeting program will include an update and review of the ongoing supplementary risk assessment study as well as opportunity for oral public comment. In addition, at any time, members of the public may file written comments to the following address: NIH Blue Ribbon Panel, Office of the Director, National Institutes of Health, Mail Stop Code 7985, Bethesda, MD 20892–7985 or by sending an e-mail to: *nih_brp@od.nih.gov.*

An agenda and slides for the meeting will be posted to the NIH Blue Ribbon Panel Web site in advance of the meeting at: *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/.* For additional information concerning this meeting, contact Ms. Kelly Fennington, Senior Health Policy Analyst, Office of Biotechnology Activities, Office of Science Policy, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985; telephone 301–496–9838; e-mail *fennington@nih.gov.*

Dated: September 1, 2010.

Amy P. Patterson,

Acting Director, Office of Science Policy, National Institutes of Health.

[FR Doc. 2010–22323 Filed 9–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; Technologies to Reduce Health Disparities SBIR 2011/01.

Date: November 3, 2010.

Time: 8 a.m. to 4 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: Ruixia Zhou, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov*.

Dated: September 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22329 Filed 9–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: November 9, 2010.

Time: 12:45 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy Two, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov*.

Dated: September 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22327 Filed 9–7–10; 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; Collaborative Applications in Adult Psychopathology and Disorders of Aging.

Date: October 1, 2010.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: October 4–5, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: October 4–5, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: October 13–14, 2010.

Time: 7 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: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Control.

Date: October 13–14, 2010.

Time: 7 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: Bernard F Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.

Date: October 15, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott San Francisco Union Square, 500 Post Street corner of Post and Mason, San Francisco, CA 94102.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@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: September 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22316 Filed 9–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; Maintenance of the NHLBI Biologic Specimen Repository.

Date: September 22, 2010.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@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: September 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–22314 Filed 9–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: October 21, 2010.

Open: 8:30 a.m. to 12 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Closed 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Andrew P. Mariani, PhD, Executive Secretary, National Advisory Eye Council, National Eye Institute, National Institutes of Health, 301–451–2020, *amp@nei.nih.gov.*

Any person interested may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory, Committee Policy.

[FR Doc. 2010–22312 Filed 9–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0067]

Privacy Act of 1974; United States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records notice titled, "DHS U.S. Citizenship and Immigration Services 012 Citizenship and Immigration Data Repository System of Records." Citizenship and Immigration Data Repository is a mirror copy of USCIS's major immigrant and non-immigrant benefits databases combined into a single user interface and presented in an updated, searchable format on the classified network. This system takes existing USCIS data and recompiles them into a system for the following three purposes: (1) Vetting USCIS application information for indications of possible immigration fraud and national security concerns, (2) detecting possible fraud and misuse of immigration information or position by USCIS employees, for personal gain or by coercion, and (3) to respond to requests for information (RFIs) from the DHS Office of Intelligence and Analysis (I&A) and/or the Federal intelligence and law enforcement community members that are based on classified criteria. The Department of Homeland Security is issuing a Notice of Proposed

Rulemaking concurrent with this system of records elsewhere in the **Federal Register** because certain information in the system may be classified or relevant to a law enforcement investigation. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before October 8, 2010. This new system will be effective October 8, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0067 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202–272–8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

USCIS collects personally identifiable information (PII) directly from and about immigrants and nonimmigrants through applications and petitions for the purposes of adjudicating and bestowing immigration benefits. USCIS maintains a number of systems to facilitate these purposes including: The Computer Linked Application Information Management System (CLAIMS 3), CLAIMS 4, the Refugees, Asylum, and Parole System (RAPS), Asylum Pre-screen System (APSS), Re-engineered Naturalization Application Casework System (RNACS), Central Index System (CIS) and the Fraud Detection and National Security Data System (FDNS–DS). As part of the adjudication process, USCIS personnel engage in a number of steps to ensure that an individual is eligible for a requested benefit. One of these steps is the performance of background checks to make certain that an individual is not attempting to obtain the requested benefit by fraudulent means, has not committed a crime involving moral turpitude, and/or does not pose a public safety threat or a threat to national security.

USCIS developed CIDR, hosted on DHS classified networks, in order to make information from these USCIS systems available to authorized USCIS personnel for the purposes of: (1) Vetting USCIS application information for indications of possible immigration fraud and national security concerns, (2) detecting possible fraud and misuse of immigration information or position by USCIS employees, for personal gain or by coercion, and (3) responding to requests for information (RFIs) from the DHS Office of Intelligence and Analysis (I&A) and/or Federal intelligence and law enforcement community members that are based on classified criteria. CIDR enables authorized USCIS users to more efficiently search multiple USCIS systems from a single entry point, the results of which will be retained in CIDR. CIDR's placement on DHS classified networks allows USCIS to securely conduct searches based on classified parameters and searches based on possible fraud and national security concerns.

There are occasions when USICS receives RFIs from members of the Intelligence Community (IC) and Law Enforcement (LE) that are classified. In order to assist with classified investigatory leads and respond to I&A's requests, USCIS must conduct searches whose parameters are classified on an unclassified data sets. To facilitate a more efficient and secure environment in which to conduct these queries and to store their results, DHS determined that creating mirror copies of its unclassified data sets on the classified side would be the most appropriate solution. CIDR provides the capability to properly conduct and protect classified searches and maintain detailed audit trails of search activities and results. Copying unclassified data from the unclassified systems to a classified site does not render this information classified, only the search parameters and their results. CIDR will enable USCIS personnel to perform searches of its non classified data sets in a classified environment, ensuring that the integrity of the classified RFI process is maintained. Based on the results of the searches performed in CIDR, USCIS will produce a response to the RFI, which will include the content of the RFI, information from CIDR that is responsive to the RFI, and any necessary explanations to provide proper context and interpretations of the information provided. These responses will contain PII when de-identified or statistical data cannot satisfy the RFI. These responses will be produced by USCIS personnel as separate electronic documents and sent to I&A in the same manner that the RFI was received; usually via e-mail over the classified e-mail network.

USCIS is proposing to exempt classified information in CIDR from disclosure to a requestor to preserve the integrity of ongoing counterterrorism, intelligence, or other homeland security activities, pursuant to the Privacy Act. 5 U.S.C. 552a(k)(1) and (2).

Consistent with DHS's information sharing mission, information stored in CIDR may be shared with other DHS components, as well as appropriate Federal, State, local, Tribal, foreign, or international governmental agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to establish a new Department of Homeland Security (DHS) system of records notice, titled DHS U.S. Citizenship and Immigration Services 012—Citizenship and Immigration Data Repository (CIDR).

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework, governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may

request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the USCIS 012 CIDR system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS DHS/USCIS—012

SYSTEM NAME:

United States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Records are maintained at the USCIS Headquarters in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: Persons who have filed (for themselves or on the behalf of others) applications or petitions for immigration benefits under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments or received refunds from such applications or petitions; current, former and potential (*e.g.,* fiancé) family members of applicants/petitioners; persons who complete immigration forms for applicants and petitioners (*e.g.,* attorneys, form preparers); and name of applicant's employer. Additionally, CIDR will maintain information on USCIS personnel who have used the underlying USCIS systems included in CIDR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Social Security Number (if applicable);
- A-Number (if applicable);
- Addresses;
- Telephone numbers;
- Birth and death information;
- Citizenship or nationality;
- Immigration status;
- Marital and family status;
- Personal characteristics (*e.g.,* height and weight);
- Records regarding tax payment and financial matters;
- Records regarding employment;
- Medical records;
- Military and Selective Service records;
- Records regarding organization membership or affiliation;
- DHS issued card serial numbers;
- Records regarding criminal history and other background check information;
- Case processing information, such as date applications were filed or received by USCIS; application/petition status, location of record, FOIA/PA or other control number when applicable;
- Fee receipt data;
- Records of searches, analyses, correspondence, and outputs generated by USCIS personnel in response to a classified request for USCIS immigrant and non-immigrant data; and
- System audit logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system is in § 101 and 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 and 1103), and the regulations issued pursuant thereto; § 451 of the Homeland Security Act of 2002 (Pub. L. 107–296); E.O. 12958; E.O. 13356; E.O. 13388; and E.O. 12333.

PURPOSE(S):

The purpose of this system is (1) vetting USCIS application information for indications of possible immigration fraud and national security concerns, (2) detecting possible fraud and misuse of immigration information or position by USCIS employees, for personal gain or by coercion, and (3) to respond to RFIs from the DHS I&A and/or the Federal intelligence and law enforcement community members that are based on classified criteria.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies, pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight functions.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided

information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a Federal, State, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by an individual's name, other identifiers, attributes, benefits application and case status data, address, associates, and any other data associated with an individual maintained by USCIS in source systems. Additionally, records may be retrieved by the output of USCIS's search, analysis, and response to classified requests for USCIS data.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

CIDR does not retain the replicated data sets from the underlying USCIS data systems, to include CLAIMS 3, CLAIMS 4, RAPS, APSS, RNACS, and CIS and the associated audit trails of DHS personnel using the systems, as covered by the DHS/ALL–004—General Information Technology Access Account Records System (GITAARS). The data supplied by these systems are retained by those systems in accordance with their own retention schedules. CIDR simply mirrors these data sets. Information will be removed from CIDR after it has been removed in the source system. CIDR retains a record of the classified search request, the results of the request, and a log of these activities for five years. These are maintained for a minimum of five years in accordance with DCID 6/3. Classified data will be maintained for the period of time required by the originating classification authority.

SYSTEM MANAGER AND ADDRESS:

Chief, Technology Coordination Division Office of Security and Integrity, USCIS, 111 Massachusetts Avenue, NW., Washington, DC 20529.

NOTIFICATION PROCEDURE:

DHS is exempting the records from general access provisions, pursuant to 5 U.S.C. 552a(k)(1) and (2). Each request for information within CIDR will be reviewed to determine whether or not the record within CIDR meets the requirements of the exemptions and, as appropriate, to disclose information that does not meet the requirements. This does not prevent the individual from gaining access to his records in the source systems noted below. Persons may seek access to records maintained in the source systems that feed into CIDR, currently CLAIMS 3, and in future releases, CLAIMS 4, RAPS, APSS, RNACS, and CIS.

USCIS treats all requests for amendment of information in a system of records as Privacy Act amendment requests. Any individual seeking to access information maintained in CLAIMS 3, CLAIMS 4, RAPS, APSS, RNACS, and CIS and associated systems should direct his or her request to the USCIS FOIA/Privacy Act (PA) Officer at USCIS FOIA/PA, 70 Kimball Avenue, South Burlington, Vermont 05403–6813 (Human resources and procurement records) or USCIS National Records Center (NRC), P.O. Box 648010, Lee's Summit, MO 64064–8010 (all other USCIS records). The process for requesting records can be found at 6 CFR 5.21. Requests for records amendments may also be submitted to the service center where the application was originally submitted. The request should clearly state the information that is being contested, the reasons for contesting it, and the proposed amendment to the information. If USCIS intends to use information that is not contained in the application or supporting documentation (*e.g.,* criminal history received from law enforcement), it will provide formal notice to the applicant and provide them an opportunity to refute the information prior to rendering a final decision regarding the application. This provides yet another mechanism for erroneous information to be corrected.

Requests for access to records in this system must be in writing. Such requests may be submitted by mail or in person. If a request for access is made by mail, the envelope and letter must be clearly marked "Privacy Access Request" to ensure proper and expeditious processing. The requester should provide his or her full name, date and place of birth, and verification of identity (full name, current address, and date and place of birth) in accordance with DHS regulations governing Privacy Act requests (found at 6 CFR 5.21), and any other identifying information that may be of assistance in locating the record.

When seeking records from this system of records or any other USCIS system of records, the requestor must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity by providing your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that

individual certifying his/her agreement for you to access his/her records.

Without this bulleted information, USCIS will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the following systems of records:

USCIS Systems:

• Benefits Information System DHS–USCIS–007, September 29, 2008, 73 FR 56596, which corresponds to the following USCIS databases:

○ Computer Linked Adjudication Information Management System (CLAIMS 3, case tracking for all benefits except refugee status, asylum, and naturalizations.)

○ Computer Linked Adjudication Information Management System (CLAIMS 4, case tracking for naturalization benefits.)

○ Electronic Citizenship and Immigration Services Centralized Oracle Repository (eCISCOR).

○ Citizenship and Immigration Services Centralized Oracle Repository (CISCOR).

• Fraud Detection and National Security Data System (FDNS DS) DHS–USCIS–006, August 18, 2008, 73 FR 48231.

• Central Index System, (CIS) DHS–USCIS 001, January 16, 2007, 72 FR 1755.

• Asylum Information and Pre-Screening System, DHS–USCIS–010, January 5, 2010, 75 FR 409, which corresponds to the following USCIS databases:

○ The Refugees, Asylum, and Parole System (RAPS), a case management system that tracks applications for asylum pursuant to § 208 of the Immigration and Naturalization Act (INA) and applications for suspension of deportation or special rule cancellation of removal pursuant to Nicaraguan Adjustment and Central American Relief Act (NACARA) § 203 of the INA.

○ Asylum Pre-Screening System (APSS), a case management system that tracks the processing of "Credible Fear" and "Reasonable Fear" cases by Asylum staff.

DHS Intelligence and Analysis System:

• Enterprise Records System (ERS), DHS/IA–001, May 15, 2008, 73 FR 28128.

DHS-Wide:

• DHS/ALL–004—General Information Technology Access Account Records System (GITAARS), September 29, 2009, 74 FR 49882.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from subsections (c)(3), (c)(4), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a (k)(1) and (2) of the Privacy Act.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–22306 Filed 9–7–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0099]

Agency Information Collection Activities: Form I–914; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–914 and Supplements A and B, Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons; OMB Control No. 1615–0099.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 8, 2010.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–914. Should USCIS decide to revise Form I–914 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–914.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0099 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

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

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Supplement A: Application for Immediate Family Member of T–1 Recipient; and Supplement B: Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–914; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–914 permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking

and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914, 500 responses at 2.25 hours per response; Supplement A, 500 responses at 1 hour per response; Supplement B, 200 responses at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,725 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: September 2, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–22352 Filed 9–7–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Revision of Information Collection; Non-Use Valuation Survey, Klamath Basin; Correction and Supplement

AGENCY: U.S. Department of the Interior.

ACTION: Correction and Supplement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary of the Department of the Interior announces the proposed revision of an information collection "Klamath Non-use Valuation Survey," Office of Management and Budget (OMB) Control No. 1090–0010, and that it is seeking comments on its provisions. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this information collection.

ADDRESSES: You may submit your comments directly to the Desk Officer for the Department of the Interior (OMB 1090–0010), Office of Information and Regulatory Affairs, OMB, by electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax at 202–395–5806. Please also send a copy of your comments to the Department of the Interior; Office of Policy Analysis, Attention: Don Bieniewicz, Mail Stop 3530; 1849 C Street, NW., Washington, DC 20240. If you wish to e-mail comments, the e-mail address is *Donald_Bieniewicz@ios.doi.gov.* Reference "Klamath Non-use valuation survey" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

DATES: OMB has 60 days to review this request but may act after 30 days, therefore you should submit your comments on or before September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Simon, Economics Staff Director, Office of Policy Analysis, U.S. Department of the Interior telephone at 202–208–5978 or by e-mail at *Benjamin_Simon@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This Notice corrects and supplements the Notice that was published on August 30, 2010.

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Secretary has submitted to OMB for revision.

The Klamath River provides habitat for fall and spring run Chinook salmon (Oncorhynchus tshawytscha), coho salmon (Oncorhynchus kisutch), steelhead trout (Oncorhynchus mykiss), green sturgeon (Acipenser medirostris), Pacific lamprey (Lampetra tridentate), and Pacific eulachon (Thaleichthys pacificus). Some of these species are important components of non-tribal harvest (*e.g.,* fall Chinook, steelhead), some have important subsistence and cultural value to Klamath Basin tribes (*e.g.,* salmon, sturgeon, lamprey, eulachon), and some are at low levels of abundance or Endangered Species Act-listed (*e.g.,* spring Chinook, lamprey, coho, eulachon).

Studies on the potential removal of four dams on the Klamath River owned by PacifiCorp are being conducted as a result of the Klamath Hydroelectic Settlement Agreement (KHSA) executed February 18, 2010. Under the KHSA, the Secretary of the Interior is to determine by March 31, 2012, whether the potential removal of these dams will advance restoration of the salmonid fisheries of the Klamath Basin and is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes. The determination will be based on a number of factors, including an economic analysis. One part of the economic analysis is a non-use valuation survey that is designed to determine the potential benefits of dam removal that may accrue to members of the U.S. public who value such improvements regardless of whether they consume Klamath Basin fish or visit the Klamath Basin. Non-use valuation surveys such as the one discussed herein are routinely included as a part of the economic analysis for large-scale water development projects.

II. Data

Title: Klamath Non-Use Valuation Survey.

OMB Control Number: 1090–0010.

Type of Review: Revision of an approved collection.

Affected Entities: Households.

Respondent's Obligation: Voluntary.

Frequency of Response: One time.

Estimated Annual Number of Respondents: 10,885 households who will receive the survey (3,389 respondents and 7,496 non-respondents).

Estimated Total Annual Responses: 3,389.

Estimated Time per Response: The base for this survey is 10,885 households. The households will be divided into two mailing groups, at a 10/90 split. The first wave of mailings will be to 10% of the households. 17% of households are estimated to respond, which will take 30 minutes. Non-respondents will take 3 minutes. The second mailing will be sent to the remaining 83% of non-respondent households. 10% of the households are estimated to respond to the second mailing, taking 30 minutes. The second group of non-respondents are estimated to spend 3 minutes. The Department will then conduct preliminary analysis.

The second wave of mailings will be to the remaining 90% of the households. 17% of households are estimated to respond, which will take 30 minutes. Non-respondents will take 3 minutes. The second phase will be sent to the remaining 83% of non-respondent households. 10% of the households are estimated to respond to the second mailing, taking 30 minutes. The second group of non-respondents are estimated to spend 3 minutes.

The remaining non-respondents from the second mailings will be split into two groups in a 80/20 split. It is

assumed that 65% of the non-respondent households will have a phone number. Both groups will be sent another copy of the survey. For the households with a phone number, a non response bias call will be made, taking an estimated 2 to 5 minutes.

Estimated Total Annual Burden Hours: 3,205 hours.

III. Request for Comments

On June 9, 2009, we published in the **Federal Register** (74 FR 27340) a request for public comments on this proposed survey. No comments were received. This notice provides the public with an additional opportunity to comment on the proposed information collection activity. The Department of the Interior invites comments on:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or prove information to or for a Federal agency.

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: September 2, 2010.

Benjamin M. Simon,

Economics Staff Director, Office of Policy Analysis.

[FR Doc. 2010–22285 Filed 9–7–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–2530–B98CA]

Proposed Information Collection; Nonindigenous Aquatic Species Sighting Reporting Form

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (the U.S. Geological Survey) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden on the public.

DATES: You must submit comment on or before October 8, 2010.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please also send a copy of your comments on the ICR to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue Fort Collins, CO 80526 (mail); *pondsp@usgs.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact USGS, Pam Fuller by 7920 NW. 71st Street, Gainesville, Florida 32653 (mail); by telephone (352) 264–3481 or *pfuller@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

Information is collected from the public regarding the distribution of nonindigenous aquatic species, primarily fish, in open waters of the United States. This is vital information for early detection and rapid response for the possible eradication of organisms that may be considered invasive in a natural environment such as a lake, river, stream, and pond. These species are not native to the environment in which they are now found. Nonindigenous species can and do have negative impacts on our native species. Early detection is a major focus of the Bureau. The public can help us with this task by serving as the "eyes and ears" for the Survey's Program because the USGS cannot be everywhere, observing and monitoring all open waters for nonindigenous aquatic species.

The USGS does not actively solicit this information; a form is posted on our website to be completed with biologic, geographic and sender information. It is completely voluntary and sent to us only when the public has encountered a nonindigenous aquatic organism, usually through fishing or some other outdoor recreational activity and they chose to let us know.

We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

II. Data

OMB Control Number: 1028–NEW.

Title: Nonindigenous Aquatic Species Sighting Reporting Form.

Type of Request: This is an existing collection in use without an OMB control number or expiration date.

Affected Public: State and local government employees and private individuals.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Estimated Annual Number of Respondents: 1,000.

Estimated Total Annual Responses: 1,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 167 hours.

III. Request for Comments

We invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. 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 publically available at anytime. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that will be done.

Dated: August 31, 2010.

Anne Kinsinger,

Associate Director for Biology, U.S. Geological Survey.

[FR Doc. 2010–22237 Filed 9–7–10; 8:45 am]

BILLING CODE 4310–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–NXXX; 10120–1113–0000–F5]

Endangered Wildlife; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: In accordance with the requirements of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications for permits to conduct enhancement of survival activities with endangered species.

DATES: To ensure consideration, please send your written comments by October 8, 2010.

ADDRESSES: Program Manager, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for a recovery permit to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting review of and comments on these applications by local, State, and Federal agencies and the public.

Permit No. TE–02997A

Applicant: University of Hawaii, Hilo, Hawaii.

The applicant requests a permit to take (capture, handle, and release) *Drosophila sharpi* (formerly *D. attigua*) in conjuction with genetic research on non-listed *Drosophila* species on the island of Kauai in the State of Hawaii for the purpose of enhancing its propagation and survival.

Permit No. TE–702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The permittee requests a permit amendment to allow Service employees and their designated agents to remove/reduce to possession the following species in the State of Hawaii: *Astelia waialealae* (painiu), *Canavalia napaliensis* (awikiwiki), *Chamaesyce eleanoriae* (akoko), *Chamaesyce remyi* var. *kauaiensis* (akoko), *Chamaesyce remyi* var. *remyi* (akoko), *Charpentiera densiflora* (papala), *Cyanea dolichopoda* (haha) *Cyanea eleeleensis* (haha), *Cyanea kolekoleensis* (haha), *Cyanea kuhihewa* (haha), *Cyrtandra oenobarba* (haiwale), *Cyrtandra paliku* (haiwale), *Diellia mannii* (no common name [ncn]), *Doryopteris angelica* (ncn), *Dryopteris crinalis* var. *podosorus* (palapalai aumakua), *Dubautia kalalauensis* (naenae), *Dubautia kenwoodii* (naenae), *Dubautia imbricata* ssp. *imbricata* (naenae), *Dubautia plantaginea* ssp. *magnifolia* (naenae), *Dubautia waialealae* (naenae), *Geranium kauaiense* (nohoanu), *Keysseria erici* (ncn), *Keysseria helenae* (ncn), *Labordia helleri* (kamakahala), *Labordia pumila* (kamakahala), *Lysimachia daphnoides* (lehua makanoe), *Lysimachia iniki* (ncn), *Lysimachia pendens* (ncn), *Lysimachia scopulensis* (ncn), *Lysimachia venosa* (ncn), *Melicope degeneri* (alani), *Melicope paniculata* (alani), *Melicope puberula* (alani), *Myrsine knudsenii* (kolea), *Myrsine mezii* (kolea), *Phyllostegia renovans* (ncn), *Pittosporum napaliense* (hoawa), *Platydesma rostrata* (pilo kea lau li i), *Pritchardia hardyi* (loulu), *Psychotria grandiflora* (kopiko), *Psychotria hobdyi* (kopiko), *Schiedea attenuata* (ncn), *Stenogyne kealiae* (ncn), *Tetraplasandra bisattenuata* (ohe), and *Tetraplasandra flynnii* (ohe), all of the above species are endemic to the island of Kauai; to take the akikiki (*Oreomystis bairdi*), akekee (*Loxops caeruleirostris*), and the picture-wing fly (*Drosophila sharpi*(= *D. attigua*), all of which endemic to the island of Kauai; to take the flying earwig Hawaiian damselfly (*Megalagrion nesiotes*), which is endemic to the island of Maui; and to take the Pacific Hawaiian damselfly (*Megalagrion pacificum*), which is endemic to the islands of Hawaii, Maui, and Molokai. The purpose of these activities is to carry out recovery actions which will enhance the species' propagation and survival.

Public Comments

We are soliciting public review and comment on these recovery permit applications. Submit written comments to the Program Manager, Endangered Species (*see* address above). 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.

Please refer to the permit number for the application when submitting comments. All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: August 6, 2010.

Theresa E. Rabot,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2010–22372 Filed 9–7–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 14, 2010. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 23, 2010.

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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Arkansas County

A.M. Bohnert Rice Plantation Pump #2 Engine, SE corner of US 165 and Post Bayou Lane, Gillett, 10000783

Benton County

Kansas City Southern Railway Caboose #383, NW of the AR 72 and AR 59 intersection, Gravette, 10000782

Chicot County

Demott Commercial Historic District, 101–120 N. Freeman; 101–219 E. Iowa St. and 131 N. Main St., Dermott, 10000789

Faulkner County

Conway Commercial Historic District, Roughly bounded by Main St on the S, Harkrider St and Spencer St on the E, just S of Mill St to the N, and Locust St, Conway, 10000779

Howard County

Nashville Commercial Historic District, Bounded roughly by Shepherd St., Missouri Pacific Railroad, Hempstead St. and Second St., Nashville, 10000784

Sebastian County

Fishback Neighborhood Historic District, Roughly bounded by Rogers, Greenwood, and Dodson Aves and 31st St, Fort Smith, 10000780

Woodruff County

Augusta Electrical Generating Plant, SW corner of 5th and Spruce Sts, Augusta, 10000788

McCrory Commercial Historic District, Roughly Edmonds Ave between Railroads & Third Sts, McCrory, 10000781

CALIFORNIA

Sacramento County

PG&E Powerhouse, 400 Jibboom St, Sacramento, 10000774

Santa Clara County

Renzel, Ernest & Emily, House, 120 Arroyo Way, San Jose, 10000773

GEORGIA

Chatham County

Rourke, James and Odessa, Jr., Raised Tybee Cottage, 702 14th St, Tybee Island, 10000804

Cherokee County

Canton Historic District, Roughly centered on Main St between the Etowah River on the W and Jeanette St on the E, Canton, 10000803

Indiana

Jackson County

Vehslage, George H., House, 515 N Chestnut St, Seymour, 10000775

Lake County

Forest—Moraine Residential Historic District, Roughly bounded by Wildwood Rd., 165th St, Hohman Ave & Stateline Ave, Hammond, 10000777

Forest—Southview Residential Historic District, Roughly bounded by 165th St, Hohman Ave, Locust St, and State Line Ave, Hammond, 10000778

MASSACHUSETTS

Barnstable County

Jarvesville Historic District, Roughly bounded by Liberty, Main, Jarves, and Church Sts, and the town landing, Sanwich, 10000787

Middlesex County

Two Brothers Rocks—Dudley Road Historic District, Roughly Dudley Rd between Chestnut Lane and Emery Rd, Bedford, and Timbercreek Lane, Billerica, from SR 4 to Concord River Bedford, 10000790

Norfolk County

Ellice School, 185 Pleasant St, Millis, 10000785

Worcester County

Eagleville Historic District, Main St, Princeton St, High St, Holden, 10000786

NEW YORK

Clinton County

Miner, Alice T., Colonial Collection, 9618 State Road Route 9, Chazy, 10000799

Monroe County

Teoronto Block Historic District, Bounded by State, Brown, Factory and Mill Sts, Rochester, 10000798

Otsego County

Tunnicliff-Jordan House, 68–72 Main St, Richfield Springs, 10000796

Suffolk County

Smith, Frank W., House, 43 Barberry Ct, Amityville, 10000797

OKLAHOMA

Tulsa County

Casa Loma Hotel, (Route 66 and Associated Resources in Oklahoma AD MPS) 2626–2648 E Eleventh St, Tulsa, 10000805

OREGON

Lane County

The Big 'O', Skinner Butte, Eugene, 10000800

Linn County

Santiam Wagon Road, Willamette National Forest, Deschutes National Forest, Cascaia, Sisters, 10000795

Malheur County

Owyhee Dam Historic District, Owyhee Lake Rd; 11 mi SW of Adrian, Adrian, 10000791

Multnomah County

Campbell, David, Memorial, 1800 W Burnside St, Portland, 10000802

Visitors Information Center, 1020 SW Naito Parkway, Portland, 10000801

VERMONT

Washington County

North Glass Village Historic District, N Calais Rd, Foster Hill Rd, Upper Rd, Moscow Hills Rd, G.A.R. Rd, Calais, 10000772

VIRGINIA

Botetourt County

Greenfield, Botetourt Center at Greenfield, US HWY 220, Fincastle, 10000792

Dinwiddie County

Central State Hospital Chapel, West Washington Street Extended, Petersburg, 10000794

Newport News Independent city

Lee Hall Depot, 9 Elmhurst St, Newport News, 10000793

[FR Doc. 2010–22242 Filed 9–7–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–470–471 and 731–TA–1169–1170 (Final)]

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From China and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: *Effective Date:* September 1, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective May 6, 2010, the Commission established a schedule for the conduct of the final phase of the subject investigations (75 FR 29364, May 25, 2010). The Commission has decided to revise its schedule with respect to the date for filing posthearing briefs. The deadline for filing posthearing briefs is September 28, 2010.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and

Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: September 1, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–22245 Filed 9–7–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Amendment

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed First Amendment to RD/RA Consent Decree in *United States of America et al.* v. *FMC Corporation and J.R. Simplot Company,* Civil Action No. 99–296–E–BLW (D. Idaho), was lodged with the United States District Court for the District of Idaho on August 31, 2010. The proposed First Amendment to the RA/RA Consent Decree amends the consent decree entered on May 9, 2002, by requiring defendant J.R. Simplot Company ("Simplot") to implement EPA's January 20, 2010 Interim Record of Decision Amendment for the Simplot Operable Unit of the Eastern Michaud Flat Superfund Site.

Under the proposed First Amendment to RD/RA Consent Decree, Simplot will implement EPA's January 20, 2010 Interim Record of Decision Amendment according to a Scope of Work which is attached to the First Amendment to RD/RA Consent Decree. Work to be performed by Simplot under the proposed First Amendment to RD/RA Consent Decree includes: An assessment of ongoing and past releases of contaminants of concern (including phosphorus) at or near Simplot's phosphoric acid plant; the development and implementation of a verifiable plan to control the sources of phosphorus and other contaminants of concern within the Simplot operable unit; the installation of a synthetic liner on the receiving surface of the gypsum stack to reduce water from infiltrating through the stack into groundwater; and the continued development, operation, maintenance, and augmentation, to the extent necessary, of the groundwater extraction system to keep contaminant of concern levels at or below cleanup standards. The installation of the liner will be performed in three phases over a 5 year period. The installation of the enhanced groundwater extraction and monitoring system will be completed in a similar time frame. The estimated cost for implementing the selected amended remedy is approximately $50 million. The proposed First Amendment to RD/RA Consent Decree includes a covenant not to sue by the United States for the work under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"), and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive written comments relating to the proposed Consent Decree Amendment for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al.* v. *FMC Corporation and J.R. Simplot Company,* DJ Reference No. 90–11–3–10054. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree Amendment may be examined at the Office of the United States Attorney, District of Idaho, Washington Group Plaza IV, 800 Park Blvd., Suite 600, Boise, ID 83712. During the public comment period, the Consent Decree Amendment may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree Amendment 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 $24 (25 cents per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 2010–22267 Filed 9–7–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on July 27, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Virgin Media Limited, London, United Kingdom, and Compton Communications, Port Perry, Ontario, Canada, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. The membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on May 21, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 11, 2008 (73 FR 39986).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22219 Filed 9–7–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on July 26, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3M Company, Washington, DC; Accio Energy, Inc., Ann Arbor, MI; adapt laser systems, LLC, Kansas City, MO; Analysis, Integration & Design, Inc., Melbourne, FL; ARC Technology Solutions, LLC, Nashua, NH; EAK Systems, San Diego, CA; Betis Group, Inc., Arlington, VA; Claxton Logistics Services, LLC, Stafford, VA; Clemson University, Greenville, SC; Concurrent Technologies, Johnstown, PA; Connecticut Center for Advanced Technology, Inc. (CCAT), East Hartford, CT; Diamond Nets Inc., Everson, WA; Eastern Instrumentation of Philadelphia, Morristown, NJ; George Washington University, Washington, DC; Geotest Marvin Test Systems, Inc., Irvine, CA; Gravikor, Inc., Ann Arbor, MI; GSA Service Company, Sterling, VA; Guerrero Professional Services d/b/a Dr. Diesel Technologies, Temecula, CA; Kitsap Economic Development Alliance, Bremerton, WA; Messier-Dowty, Inc., Ajax, Ontario, CANADA; Milspray Military Technologies, Lakewood, NJ; One Network Enterprises, Inc., Dallas, TX; Packer Engineering, Inc., Naperville, IL; PDQ Precision Inc., National City, CA; Pendaran Inc., Ann Arbor, MI; Plasan Carbon Composites, Bennington, VT; The POM Group, Inc., Auburn Hills, MI; Pratt & Miller Engineering and Fabrication, Inc., New Hudson, MI; Seica Inc., Salem, NH; SenGenuity, Hudson, NH; SpaceForm Welding Solutions Inc., Madison Heights, MI; StandardAero Redesign Services, Inc., San Antonio, TX; and Technical Objectives Professionals, LLC (TOP Inc.), Kasson, MN, have been added as parties to this venture.

Also, Agie Charmilles, Lincolnshire, IL; Ahura Scientific, Inc., Wilmington, MA; America's Phenix, Washington, DC; Analex Corporation, Fairfax, VA; Ben Franklin Technology Partners, Pittsburgh, PA; Chromalloy Gas Turbine Corporation, Ft. Walton Beach, FL; Clean Diesel Technologies, Inc., Stamford, CT; Delphi Automotive Systems Corporation, Troy, MI; Durr Environmental, Inc., Plymouth, MI; Electrical-Mechanical Associates, Inc., Ann Arbor, MI; The Euclid Chemical Company, Cleveland, OH; Flow International Corporation, Kent, WA; Four Rivers Associates, Mequon, WI; Goodrich, Fuel & Utility Systems, Vergennes, VT; Oxonica plc, Mountain View, CA; R. Morley Inc., Milford, NH; Renaissance Services Inc., Springfield, OH; Rolls-Royce Corporation, Indianapolis, IN; Sound & Sea Technology, Inc., Edmonds, WA; University of Michigan, Ann Arbor, MI; Vision Solutions International, Ann Arbor, MI; and Vought Aircraft Industries, Inc., Dallas, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). The last notification was filed with the Department on September 24, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 30, 2009 (75 FR 62600).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22220 Filed 9–7–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on July 8, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TYX Corporation has changed its name to EADS NA Test & Service, Reston, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on April 15, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 20, 2010 (75 FR 28294).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22223 Filed 9–7–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Warheads and Energetics Consortium

Notice is hereby given that, on August 16, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Warheads and Energetics Consortium ("NWEC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cornerstone Research Group, Inc., Dayton, OH; Cyalume Technologies, Inc., West Springfield, MA; Fibertek, Inc., Herndon, VA; GG Greene Enterprises Inc., Warren, PA; Hittite Microwave Corporation,

Chelmsford, MA; Manufacturing Techniques, Inc., Kilmarnock, VA; QorTek, Inc., Williamsport, PA; Resodyn Acoustic Mixers, Butte, MT; Rockwell Collins, Cedar Rapids, IA; Sabre Consulting and Training, LLC, Wharton, NJ; and UTRON, Inc., Manassas, VA, have been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NWEC intends to file additional written notifications disclosing all changes in membership.

On June 29, 2000, NWEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on April 16, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 22, 2009 (74 FR 24035).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–22221 Filed 9–7–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0047]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine (DEA Form 488)

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 75, Number 128, Page 38834 on July 6, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 8, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection 1117–0013

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine (DEA Form 488).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: DEA Form 488, Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

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

Primary: Business or other for-profit.

Other: None.

Abstract: 21 U.S.C. 952 and 21 CFR 1315.34 require that persons who desire to import the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine during the next calendar year shall apply on DEA Form 488 for import quota for such List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that fifty-seven (57) individual respondents will submit eighty (80) individual import quota applications. DEA estimates that each response will take one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection will involve eighty (80) annual public burden hours.

IF ADDITIONAL INFORMATION IS REQUIRED CONTACT: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: August 2, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–22384 Filed 9–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0013]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application for Permit To Import Controlled Substances for Domestic and/or Scientific Purposes Pursuant to 21 U.S.C. 952; DEA Form 357

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 128, page 38835 on July 6, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 8, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection 1117–0013:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952 (DEA Form 357).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* DEA Form 357, Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

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

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21, CFR, Section 1312.11 requires any registrant who desires to import certain controlled substances into the United States to have an import permit. In order to obtain the permit, an application must be made to the Drug Enforcement Administration on DEA Form 357.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 84 persons complete an estimated 873 DEA Form 357s at 15 minutes per form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 218 annual burden hours associated with this collection.

If Additional Information is Required Contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: August 2, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–22381 Filed 9–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Proposals, Submissions, and Approvals

August 31, 2010.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth on 202–693–4129 (this is not a toll-free number) and e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Wage and Hour Division, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see below*).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Wage and Hour Division.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Labor Standards for Federal Service Contracts—Regulations 29 CFR, Part 4.

OMB Control Number: 1235–0007.

Affected Public: Businesses or other for-profits, Federal Government.

Total Estimated Number of Responses: 50,812.

Total Estimated Annual Burden Hours: 49,220.

Total Estimated Annual Costs Burden: $0.

Description: Service Contract Act section 2(a) provides that every contract subject to the Act must contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees performing work on the contract. This information collection pertains to records needed to determine an employee's seniority for purposes of determining any vacation benefit, to conform wage rates where they do not appear on a wage determination (WD), and to update WDs because of changing terms in a collective bargaining agreement. For additional information, *see* related notice published in the **Federal Register** on March 10, 2010, (75 FR 11198).

Dated: August 31, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–22282 Filed 9–7–10; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement of the Career Videos for America's Job Seekers Challenge; Correction

AGENCY: Employment and Training Administration.

ACTION: Notice; Correction.

SUMMARY: The Department of Labor (DOL) published a document in the **Federal Register** of May 18, 2010, announcing the Career Videos for America's Job Seekers Challenge. The dates for all phases of this Video Challenge have been extended. This document contains corrections to the dates published on that date on page 27824, columns two and three.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 18, 2010, page 27824, column two under **SUPPLEMENTARY INFORMATION,** first paragraph, beginning with line 15, the corrected dates should read:

Phase 1 will run from May 10 to November 1, 2010. In this phase, the general public can submit their occupational video for one of the 15 occupational categories to *http://www.dolvideochallenge.ideascale.com*. The submitted occupational videos should pertain to one of the following occupations:

1. Biofuels Processing Technicians;
2. Boilermakers;
3. Carpenters;
4. Computer Support Specialists;
5. Energy Auditors;
6. Heating, Air Conditioning, and Refrigeration Mechanics and Installers/Testing Adjusting and Balancing (TAB) Technicians;
7. Licensed Practical and Licensed Vocational Nurse;
8. Medical Assistants;
9. Medical and Clinical Lab Technicians including Cytotechnologists;
10. Medical Records and Health Information Technicians including Medical Billers and Coders;
11. Pipe fitters and Steamfitters;
12. Radiological Technologists and Technicians;
13. Solar Thermal Installers and Technicians;
14. Weatherization Installers and Technicians; and
15. Wind Turbine Service Technicians.

Those who submitted a video prior to the previous deadline of August 20 and wish to submit an alternate version may do so by November 1, and indicate that they wish to substitute it for the original version.

Phase 2 will run from November 2 to November 19. During this phase, the DOL/Employment and Training Administration (ETA) will screen, review, and identify the top three career videos in each occupational category and post these selected videos online at *http://www.dolvideochallenge.ideascale.com* for public review.

Phase 3 will run from November 22 to December 31. During this phase, the public will recommend the top career video in each occupational category. They will also have the opportunity to comment on videos.

Phase 4 will run from January 3 to January 14, 2011. In this final phase, DOL and ETA will communicate the top career video in each occupational category to the workforce development community, educational community, and job seekers by:

1. Posting an announcement of the top ranking videos on key Web sites including:
   - DOL.gov;
   - DOLETA.gov;
   - White House Office of Science and Technology Policy blog;
   - Workforce3One.org; and Other sites;
2. Highlighting the videos and occupations on ETA's *http://www.CareerOneStop.org* portal, which already houses a variety of occupational videos for the workforce system;
3. Providing additional coverage of the videos on the ETA Communities of Practice, including: 21st Century Apprenticeship, Green Jobs, Reemployment Works, Regional Innovators, and Disability and Employment.
4. Utilizing other communication outlets such as national associations and intergovernmental organizations like the National Association of State Workforce Agencies, the National Association of Workforce Boards, the National Governor's Association, the National Association of Counties, and the Association of Community Colleges.

FOR FURTHER INFORMATION CONTACT: Michael Harding, Room C–4510 Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–2921 (this is not a toll-free number). Fax: 202–693–3015. E-mail: *Harding.Michael@dol.gov*.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–22313 Filed 9–7–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Smith Gin Coop/Odem, Texas.

Principal Product/Purpose: The loan, guarantee, or grant application is to refinance an existing loan to create working capital for essential operating expenses. The NAICS industry code for this enterprise is: 115111 Cotton ginning.

DATES: All interested parties may submit comments in writing no later than September 22, 2010. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202)693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202)693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or

likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC this 1st day of September, 2010.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2010–22318 Filed 9–7–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–108)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–4871; (281) 483–6936 [Facsimile].

NASA Case No. MSC–24238–1: Microwave Tissue Welding for Wound Closure.

Dated: September 1, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–22389 Filed 9–7–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–109)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899; telephone (321) 867–7214; fax (321) 867–1817.

NASA Case No. KSC–12723–DIV: Coatings and Methods for Corrosion Detection and/or Reduction; NASA Case No. KSC–13047: Insulation Test Cryostat with Lift Mechanism.

Dated: September 1, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–22386 Filed 9–7–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–107)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No.: NPO–46771–1: Diamond Heat-Spreader for Submillimeter Wave GAAS Schottky Diodes Frequency Multipliers;

NASA Case No.: NPO–47218–1: Method of Discerning the Viable Bioburden in Low-Biomass Samples.

Dated: September 1, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–22385 Filed 9–7–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–106)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 8, 2010.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–32715–1: Method of Promoting Single Crystal Growth During Melt Growth of Semiconductors;

NASA Case No. MFS–32642–1: Liquid Level Sensing System;

NASA Case No. MFS–32638–1: Force Sensor Using Changes in Magnetic Flux;

NASA Case No. MFS–32614–1: Magnetostrictive Pressure Regulating System.

Dated: September 1, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–22388 Filed 9–7–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–105)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37

CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent Applications corresponding to NASA Case Nos. ARC–14744–2 entitled "A Versatile Platform for Nanotechnology Based on Circular Permutations of Chaperonin Protein," and ARC–15981–1 entitled "Chaperonin-Based Templates for Pseudo-Cellulosomes" to Conderos, Inc., having its principal place of business at 830 Garland Drive, Palo Alto, CA 94303. Patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Dated: September 1, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–22390 Filed 9–7–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, September 28, 2010.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

Matters To Be Considered

8157A Highway Accident Report—Truck-Tractor Semitrailer Rear-End Collision Into Passenger Vehicles on Interstate 44, Near Miami, Oklahoma, June 26, 2009.

News Media Contact: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, September 24, 2010.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Friday, September 3, 2010.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2010–22549 Filed 9–3–10; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–083; NRC–2010–0293]

University of Florida; University of Florida Training Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of a renewed Facility Operating License No. R–56, to the University of Florida (the licensee), which would authorize continued operation of the University of Florida Training Reactor (UFTR) located in Gainesville, Alachua County, Florida. Therefore, as required by Title 10 of the Code of Federal Regulations (10 CFR) 51.21, the NRC is issuing this Environmental Assessment and Finding of No Significant Impact.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would renew Facility Operating License No. R–56 for a period of 20 years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated July 18, 2002, as supplemented by letters dated July 25, July 29, and July 31, 2002, February 25, 2003, August 8, 2006, February 2, 2007, April 7 and November 26, 2008, September 28 and October 20, 2009, and February 26, March 11, March 26, May 3, and June 1, 2010. In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action:

The proposed action is needed to allow the continued operation of the UFTR to routinely provide teaching, research, and services to numerous institutions for a period of 20 years.

Environmental Impacts of the Proposed Action:

The NRC staff has completed its draft safety evaluation of the proposed action to issue a renewed Facility Operating License No. R–56 to allow continued operation of the UFTR for a period of 20 years and tentatively concludes there is reasonable assurance that the UFTR will continue to operate safely for the additional period of time. The details of the NRC staff's final safety evaluation will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the environmental assessment of the proposed action.

The UFTR is located in the Nuclear Reactor Building in the northeast quadrant of the University of Florida campus, approximately 1600 meters (1 mile) southwest of downtown Gainesville, Florida. Gainesville is located in the approximate center of Alachua County, which covers 975 square miles in the north-central part of Florida about midway between the Gulf of Mexico and the Atlantic Ocean. The reactor is housed in a vault-type building which serves as a confinement. The Nuclear Reactor Building and its annex, the Nuclear Sciences Center, are located in an area with laboratory and classroom buildings comprising the College of Engineering and the College of Journalism. The nearest permanent residence is the East Hall Housing facility, located 190 meters (210 yards) due west of the Nuclear Reactor Building. The UFTR site is 30 meters (33 yards) due south of Reed Laboratory; 122 meters (134 yards) due north of the

J. W. Reitz Union building; 15 meters (16 yards) due west of the Journalism Building (Weimer Hall) and 76 meters (83 yards) due east of the Materials Building (Rhines Hall). The J. Hillis Miller Health Center complex is 795 meters (870 yards) southeast of the UFTR and most of the University of Florida residence halls, fraternity houses, and Lake Alice are found within 850 (930 yards) to 1,220 meters (1,334 yards) from the UFTR. There are no industrial, transportation, or military facilities in the immediate vicinity of the UFTR. The nearest airport is approximately 8 kilometers (5 miles) due northeast.

The UFTR is a modified Argonaut type, graphite-moderated, graphite-reflected, light water cooled reactor. It is currently licensed for 100 kilowatts thermal (kW(t)) steady state power with a maximum power of 125 kW(t) limited by the protection system. The reactor is used for instruction and university research activities. The reactor is fueled with low-enriched uranium-aluminum fuel contained in MTR-type plates assembled in bundles. Reactivity control is provided by 3 safety control blades and 1 regulating control blade. A detailed description of the reactor can be found in the UFTR Safety Analysis Report (SAR). The major modification since 1981 was the conversion from high enriched uranium fuel to low-enriched uranium fuel in 2006.

The licensee has not requested any changes to the facility design or operating conditions as part of this renewal request. No changes are being made in the types or quantities of effluents that may be released off site. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. As discussed in the NRC staff's safety evaluation, the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. Accordingly, there would be no increase in routine occupational or public radiation exposure as a result of license renewal. As discussed in the NRC staff's safety evaluation, the proposed action will not significantly increase the probability or consequences of accidents. Therefore, license renewal would not change the environmental impact of facility operation. The NRC staff evaluated information contained in the licensee's application and data reported to the NRC by the licensee for the last 6 years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC staff concludes that continued operation of the reactor would not have a significant environmental impact.

I. Radiological Impact

Environmental Effects of Reactor Operations:

Gaseous effluents from the UFTR are discharged through the reactor stack which is 9 meters (30 feet) high and has a volumetric flow rate of approximately 7.4 cubic meters (261 cubic feet) per second. Other release pathways do exist; however, they are normally secured during reactor operation and they have insignificant flow rates compared to the facility stack exhaust system. The only significant nuclide found in the gaseous effluent stream is argon-41 (Ar-41). The licensee performed measurements of Ar-41 production during reactor operation. Licensee calculations, based on those measurements, indicate that the annual Ar-41 releases resulted in an offsite concentration of 8.81 E–10 microcuries per milliliter (μCi/ml) of air, which is below the limit of 1.0 E–8 μCi/ml specified in 10 CFR Part 20, Appendix B, for Ar-41 effluent releases in air. The NRC staff performed an independent calculation and found the licensee's calculation to be reasonable. The potential radiation dose to a member of the general public resulting from this concentration is approximately 0.044 milliSieverts (mSv) (4.4 millirem) per year and this demonstrates compliance with the annual dose limit of 1 mSv (100 millirem) set by 10 CFR 20.1301. Additionally, this potential radiation dose demonstrates compliance with the air emissions dose constraint of 0.1 mSv (10 millirem) per year specified in 10 CFR 20.1101(d).

The licensee disposes of liquid radioactive wastes from the UFTR by discharge into an outside above-ground Waste Water Holdup Tank. Liquid from the tanks is analyzed for radioactivity to verify activity levels are within 10 CFR 20.2003 limits prior to disposal to the sanitary sewer. The licensee also disposes of liquids by transfer to a radioactive waste disposal facility, in the infrequent event that the liquid waste would not meet the requirements for discharge to the sanitary sewer. During the past 6 years, the licensee reported only routine releases of liquid radioactive waste once or twice each year to the sanitary sewerage system. The maximum concentration was less than 5.0 E–9 μCi/ml, which is well within the 10 CFR Part 20, Appendix B, limit for monthly average concentration of 1 E–7 μCi/ml for beta/gamma emitters released to the sewer.

The licensee may transfer solid low-level radioactive waste from the UFTR to the University of Florida Radiation Control Office for appropriate disposal, or may transfer solid low-level waste directly to an authorized carrier or waste processor. The waste consists of irradiated samples, packaging materials, contaminated gloves and clothing, demineralizer resins, filters, and other similar items. The licensee did transfer spent nuclear fuel to the U.S. Department of Energy (DOE) from the site following the conversion to low-enriched uranium fuel. To comply with the Nuclear Waste Policy Act of 1982, the University of Florida has entered into a contract with the DOE that provides that DOE retains title to the fuel utilized at the UFTR and that DOE is obligated to take the fuel from the site for final disposition.

As described in Chapter 11 of the UFTR SAR, personnel exposures are well within the limits set by 10 CFR 20.1201 and are as low as is reasonably achievable (ALARA). The licensee tracks personnel exposures which are usually less than 0.5 mSv (50 millirem) per year. The University of Florida ALARA program requires the Radiation Control Officer to investigate any annual personnel exposures greater than 1.25 mSv (125 millirem) in a calendar quarter for UFTR Operations Personnel and greater than 0.5 mSv (50 millirem) in a calendar quarter for Non-Operations personnel. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to record and track the radiological impact of UFTR operation on the surrounding unrestricted area. The program consists of quarterly exposure measurements at twenty monitoring stations immediately surrounding the UFTR and 6 monitoring stations within 8 kilometers (5 miles) of the UFTR. In addition, samples are collected of water, soil, and vegetation at twenty-two locations within 300 meters (328 yards) of the UFTR. The Radiation Control Officer administers the program and maintains the appropriate records. Over the past 6 years, the survey program indicated that radiation exposures and sample results at the monitoring locations were not significantly higher than those measured at the control locations. Year-to-year trends in exposures and sample results are consistent between

monitoring locations. Also, no correlation exists between total annual reactor operation and annual exposures and sample results at the monitoring locations. Based on the NRC staff's review of the past 6 years of data, the NRC staff concludes that operation of the UFTR does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are expected as a result of license renewal.

Environmental Effects of Accidents:

Accident scenarios are discussed in Chapter 13 of the UFTR SAR. The maximum hypothetical accident (MHA) is a core-crushing accident which would result in the uncontrolled release of the gaseous fission products from exposed fuel surfaces to the reactor building and into the environment. The licensee conservatively calculated doses to facility personnel and the maximum potential dose to a member of the public. NRC staff performed independent calculations to verify that the doses represent conservative estimates for the MHA. Occupational doses resulting from this accident would be well below 10 CFR 20.1201 limit of 50 mSv (5000 millirem). Maximum doses for members of the public resulting from this accident would be well below 10 CFR 20.1301 limit of 1 mSv (100 millirem). The proposed action will not increase the probability or consequences of accidents.

II. Non-Radiological Impact

The UFTR core is cooled by a light water primary system consisting of a 200-gallon coolant storage tank, a heat removal system, and a processing system. Primary coolant water from the reactor core flows by gravity into the primary storage tank where the primary pump circulates water from the primary storage tank through the heat exchanger and returns it into the fuel boxes of the core. Heat is removed by the secondary coolant system, which uses well water. The secondary coolant water is discharged into the storm sewer with no mixing of water between the two systems. The secondary system water pressure is maintained slightly higher than the primary system to minimize the likelihood of primary system contamination entering the secondary system if a heat exchanger leak were to develop. The licensee conducts periodic tests of the heat exchanger to further reduce the likelihood of secondary system contamination.

Release of thermal effluents from the UFTR will not have a significant effect on the environment. Given that the proposed action does not involve any change in the operation of the reactor and the heat load dissipated to the environment, the NRC staff concludes that the proposed action will not have a significant impact on the local water supply.

National Environmental Policy Act (NEPA) and Other Considerations:

NRC has responsibilities that are derived from NEPA and from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA) and Executive Order (EO) 12898 Environmental Justice. Preparing this EA satisfies the agency's obligations under NEPA. The NRC also uses this EA to address the requirements of the laws and EO mentioned above. The following presents a brief discussion of impacts associated with these laws and other requirements:

I. Endangered Species Act

Federally- or State-listed protected species have not been found in the vicinity of the UFTR. Effluents and emissions from the UFTR have not had an impact on critical habitat.

II. Coastal Zone Management Act

The UFTR is not located within any managed coastal zones nor would UFTR effluents and emissions impact any managed coastal zones.

III. National Historical Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places (NRHP) lists several historical sites located on or near the University of Florida campus. The nearest historical site is the College Hill West Historical District, located 0.8 km (0.5 miles) from the UFTR site boundary. Given the distance between the facility and the College Hill West Historical District, continued operation of the UFTR will not impact any historical sites. Based on this information, the NRC finds that the potential impacts of license renewal would have no adverse effect on historic and archaeological resources.

IV. Fish and Wildlife Coordination Act

The licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

V. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the UFTR. Such effects may include human health, ecological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around the UFTR and all are exposed to the same health and environmental effects generated from activities at the UFTR.

Minority populations in the vicinity of the UFTR—According to 2000 census data, 21.4 percent of the population (approximately 855,000 individuals) residing within a 80 kilometer (50-mile) radius of UFTR identified themselves as minority individuals. The largest minority was Black or African American (120,000 persons or 14.1 percent), followed by Hispanic or Latino (41,000 or 4.8 percent). According to the U.S. Census Bureau, about 30.3 percent of the Alachua County population identified themselves as minorities with persons of Black or African American origin comprising the largest minority group (19.3 percent). According to the census data 3-year average estimates for 2006–2008, the minority population of Alachua County, as a percent of the total population, had increased to 32.9 percent.

Low-income Populations in the Vicinity of the UFTR—According to 2000 Census data, approximately 23,000 families and 128,000 individuals (approximately 10.3 and 14.9 percent, respectively) residing within a 50-mile radius of the UFTR were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was $17,029 for a family of four.

According to Census data in the 2006–2008 American Community Survey 3–Year Estimates, the median household income for Florida was $48,637, while 12.6 percent of the state population and 9.0 percent of families were determined to be living below the Federal poverty threshold. Alachua County had a lower median household income average ($40,987) and higher percentages (22.3 percent) of individuals and families (10.3 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects; however radiation doses from

continued operations associated with this license renewal are expected to continue at current levels, and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed relicensing would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of UFTR.

Environmental Impacts of the Alternatives to the Proposed Action:

As an alternative to license renewal, the NRC considered denying the proposed action. If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required. The NRC notes that, even with a renewed license, the UFTR will eventually be decommissioned, at which time the environmental effects of decommissioning would occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan which would require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce or eliminate radioactive effluents and emissions. However, as previously discussed in this environmental assessment, radioactive effluents and emissions from reactor operations constitute a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the UFTR.

Alternative Use of Resources:

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 13 to Facility Operating License No. R–56 for the University of Florida Training Reactor dated August 30, 1982, which renewed the Facility Operating License for a period of 20 years.

Agencies and Persons Consulted:

In accordance with the Agency's stated policy, on March 15, 2010, the staff consulted with the State Liaison Officer, regarding the environmental impact of the proposed action. The consultation involved a thorough explanation of the environmental review, the details of this environmental assessment, and the NRC staff's findings. The State official stated that he understood the NRC review and had no comments regarding the proposed action.

The NRC staff also provided information about the proposed activity to the State Office of Historical Preservation on March 16, 2010. The Office of Historical Preservation agreed with the NRC regarding the conclusions of the historical assessment.

Finding of No Significant Impact:

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated July 18, 2002 [ML022130145 and ML022130185]; as supplemented by letters dated July 25, 2002 [ML022130230 and ML022130244]; July 29, 2002 [ML022130140]; July 31, 2002 [ML081340724]; February 25, 2003 [ML102240048]; August 8, 2006 [ML062230078]; February 2, 2007 [ML102240038]; April 7, 2008 [ML081350571]; November 26, 2008 [ML083450718]; September 28, 2009 [ML093620300]; October 20, 2009 [ML100430693]; February 26, 2010 [ML100610445]; March 11, 2010 [ML100710497]; March 26, 2010 [ML100880334]; May 3, 2010 [ML101250177]; and June 1, 2010 [ML101590221] and annual progress reports [ML090500396, ML092390117, ML092390039, ML092440258, ML092440257 and ML060190085]. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site *http://www.nrc.gov/reading-room/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 at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of August 2010.

For the Nuclear Regulatory Commission.

Jessie F. Quichocho,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–22392 Filed 9–7–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of September 6, 13, 20, 27, October 4, 11, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 6, 2010

There are no meetings scheduled for the week of September 6, 2010.

Week of September 13, 2010—Tentative

There are no meetings scheduled for the week of September 13, 2010.

Week of September 20, 2010—Tentative

There are no meetings scheduled for the week of September 20, 2010.

Week of September 27, 2010—Tentative

Wednesday, September 29, 2010

1 p.m. Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting). (Contact: Michael Scott, 301–415–0565).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 4, 2010—Tentative

There are no meetings scheduled for the week of October 4, 2010.

Week of October 11, 2010—Tentative

There are no meetings scheduled for the week of October 11, 2010.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*, *mailto:dlc@nrc.gov, or mailto:aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 2, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–22477 Filed 9–3–10; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act—Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 75, Number 157, Page 50009) on August 16, 2010. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 PM, September 9, 2010, in conjunction with OPIC's September 23, 2010, Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: September 3, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010–22433 Filed 9–3–10; 11:15 am]

BILLING CODE 3210–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12292]

Alaska Disaster #AK–00018 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Alaska, dated 08/27/2010.

Incident: Alaska Gateway REAA Flooding & Road Closures.

Incident Period: 07/10/2010 and continuing.

DATES: *Effective Date:* 08/27/2010.

EIDL Loan Application Deadline Date: 05/27/2011.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alaska Gateway Reaa (03).

Contiguous Counties: Alaska:

Copper River Reaa (11), Delta/Greely (14), Fairbanks North Star Borough, Yukon Flats Reaa (51).

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for economic injury is 122920.

The States which received an EIDL Declaration # are Alaska.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: August 27, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–22288 Filed 9–7–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0332]

Main Street Capital II, LP; Notice of Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Main Street Capital II, LP, 1300 Post Oak Blvd, Suite 800, Houston, TX 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730 of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730), Financings which Constitute Conflicts of Interest. Main Street Capital II, LP provided a debt/equity financing to National Trench Safety, LLC, 15955 West Hardy Road, Houston, TX 77060. The financing was made to support the growth and development of the company.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Main Street Equity Interests, Inc., an Associate of Main Street Capital II, LP, owns more than ten percent of National Trench Safety, LLC.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2010–22297 Filed 9–7–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0326]

Main Street Mezzanine Fund, LP; Notice of Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Main Street Mezzanine Fund, LP, 1300 Post Oak Blvd, Suite 800, Houston, TX 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern,

has sought an exemption under section 312 of the Act and section 107.730 of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730), Financings which Constitute Conflicts of Interest. Main Street Mezzanine Fund, LP provided a debt/equity financing to National Trench Safety, LLC, 15955 West Hardy Road, Houston, TX 77060. The financing was made to support the growth and development of the company.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Main Street Equity Interests, Inc. an Associate of Main Street Mezzanine Fund, LP, owns more than ten percent of National Trench Safety, LLC.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator of Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2010–22293 Filed 9–7–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–44A; File No. S7–17–10]

Privacy Act of 1974: Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice to establish systems of records; correction.

The Securities and Exchange Commission published a document in the **Federal Register** of August 23, 2010 concerning a Notice to establish systems of records. This correction is being published to change the effective date of that notice.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202–551–7209.

In the **Federal Register** of August 23, 2010 in FR Doc. 2010–20999 on page 51854, in the third column, the effective date in the **DATES** section is corrected to read "September 29, 2010."

Dated: September 1, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–22227 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62799; File No. SR–Phlx–2010–118]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the $.50 Strike Price Program

August 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2010, NASDAQ OMX PHLX, Inc. (the "Exchange" or "Phlx") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Commentary .05 to Exchange Rule 1012, Series of Options Open for Trading, specifically the Exchange's $.50 Strike Price Program (the "$.50 Strike Program" or "Program") [5] to: (i) Expand the $.50 Strike Program for strike prices below $1.00; (ii) extend the $.50 strike program to strike prices that are $5.50 or less; (iii) extend the prices of the underlying security to at or below $5.00; and (iv) extend the number of options classes overlying 20 individual stocks.

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, on the Commission's Web site at *http://www.sec.gov,* 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] *See* Securities Exchange Act Release Nos. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (order approving); and 61630 (March 2, 2010), 75 FR 11211 (March 10, 2010) (SR–Phlx–2010–26) (notice of filing and immediate effectiveness allowing concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike Program and the $1 Strike Program).

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

The purpose of this proposed rule change is to modify Commentary .05 to Exchange Rule 1012 to expand the $.50 Strike Program in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

The Exchange is proposing to establish strike price intervals of $.50, beginning at $.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of $.50 strike prices to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange.

Currently, Exchange Rule 1012 at Commentary .05 permits strike price intervals of $.50 or greater beginning at $1.00 where the strike price is $3.50 or less, but only for option classes whose underlying security closed at or below $3.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. Further, the listing of $.50 strike prices is limited to options classes overlying no more than 5 individual stocks as specifically designated by the Exchange. The Exchange is currently restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be

permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[6]

The number of $.50 strike options traded on the Exchange has continued to increase since the inception of the Program. There are now approximately 19 of the $.50 strike price option classes listed, and traded, across all options exchanges including Phlx; 5 of which are classes chosen by Phlx for the $0.50 Strike Program. The proposal would expand $.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place.

By way of example, if an investor wants to invest in 5,000 shares of Sirius Satellite ("SIRI") at $ 0.9678,[7] the only choice the investor would have today would be to buy out-of-the-money calls, at the $1.00 strike, or to invest in the underlying stock with a total outlay of $.96 per share or $4,800. However, if a $.50 strike series were available, an investor may be able to invest in 5,000 shares by purchasing an exercisable in-the-money $.50 strike call option. It is reasonable to assume that with SIRI trading at $.96, the $.50 strike call option would trade at an estimated price of $.46 to $.48 under normal circumstances. This would allow the investor to manage 5,000 shares with the same upside potential return for a cost of only $2,350 (assuming $.47 as a call price).

Similarly, if an investor wanted to spend $4,800 for 5,000 shares of SIRI, a $.50 put option that would trade for $.01 to $.05 would provide protection against a declining stock price in the event that SIRI dropped below $.50 per share. In a down market, where high volume widely held shares drop below $1.00, investors deserve the opportunity to hedge downside risk in the same manner as investors have with stocks greater than $1.00.

Increasing the threshold from $3.00 to $5.00 and expanding the number of $0.50 strikes available for stocks under $5.00 further aids investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at $4.24,[8] that investor would be able to choose the $4.50 strike which is 6% out-of-the-money or they would be able to choose the $5.00 strike which is 17.92% out-of-the-money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the $6.00 strike which is 41% out-of-the-money and offers significantly less premium. Pursuant to this proposal if this investor had a choice to hedge with a $5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money and would improve their return by gaining more premium, while also benefitting from 29% of upside return in the underlying equity.

By increasing the number of securities from 5 individual stocks to 20 individual stocks would allow the Exchange to offer investors additional opportunities to use the $0.50 strike program. The Exchange notes that $0.50 strikes have had no impact on capacity. Further, the Exchange has observed the popularity of $0.50 strikes. The open interest in the $2.50 August strike series for Synovus Financial Corp. ("SNV"), which closed at $2.71 on July 13, 2010, was 12,743 options; whereas open interest in the $2 and $3 August strike series was a combined 318 options. The open interest in the August $1.50 strike series for Ambac Financial Group, Inc. ("ABK"), which closed at $0.7490 on July 13, 2010, was 15,879 options compared to 8,174 options for the $2 strike series. The August $2.50 strike series had open interest of 22,280 options, also more than the traditional $2 strike series.

By expanding the $.50 Strike Program investors would be able to better enhance returns and manage risk by providing investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk.

The Exchange also proposes making a corresponding amendment to Commentary .05(a)(i)(B) of Exchange Rule 1012 to add $5 to $1 Strike Program language that addresses listing series with $1 intervals within $0.50 of an existing strike price in the same series. Currently, and to account for the overlap with the $.50 Strike Program, the following series are excluded from this prohibition: strike prices of $2, $3, and $4. The Exchange proposes to add $5 to that list to account for the proposal to expand the $.50 Strike Program to a strike price of $5.50.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that amending the current $.50 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity to minimize losses associated with declining stock prices which do not exist today. With the increase in active, low-prices securities, the Exchange believes that amending the $.50 Strike Program to allow a $.50 strike interval below $1 for strike prices of $5.50 or less is necessary to provide investor additional opportunity to minimize and manage risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[6] *See* Exchange Rule 1012, Commentary .05(a)(i)(B) referring to the $1 Strike Program.

[7] SIRI was trading at $ 0.9678 on July 13, 2010.

[8] This was the price for C on July 14, 2010.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–118 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–2010–118. 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 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–2010–118 and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62816; File No. SR–BATS–2010–022]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Name of a BATS Exchange Routing Strategy

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal a proposed rule change to amend BATS Rule 11.13(a)(3)(E) to rename the routing strategy identified as "DART" to "DRT".

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the references in Rule 11.13(a)(3)(E) from "DART" to "DRT," consistent with the Exchange's re-branding of this routing strategy as the "Dark Routing Technique." The name change from DART to DRT is a non-substantive change. No changes to the functionality of this routing strategy have taken place.

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.[3] In particular, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act,[4] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because it is concerned solely with the administration of the Exchange, the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(3) thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily 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

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

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–2010–022 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–2010–022. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2010–022, and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62818; File No. SR–BX–2010–059]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Create a Listing Market on the Exchange

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 20, 2010, NASDAQ OMX BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to create a listing market, which will be called "BX." Following Commission approval, the Exchange will announce the operational date of the new market in an Equity Trader Alert and press release. The proposed rules will become effective on the operational date.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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

In connection with the acquisition of the former Boston Stock Exchange by The NASDAQ OMX Group, Inc., the Exchange discontinued its listing marketplace and delisted all securities previously listed on the Exchange.[3] Since January 2009, the Exchange has operated as a trading venue only, allowing market participants to trade securities listed on other national securities exchanges pursuant to unlisted trading privileges.

The Exchange is proposing to begin listing securities again, through the creation of a new listing market, to be called "BX." BX will have minimal quantitative listing standards, but have qualitative requirements, which are, in many respects, similar to those required for listing on The NASDAQ Stock Market ("Nasdaq") and other national securities exchanges.[4] The Exchange believes that this market will provide an attractive alternative to companies being delisted from another national securities exchange for failure to meet quantitative listing standards (including price or other market value measures) and to smaller companies contemplating an initial exchange listing. The Exchange further believes that the proposed listing venue will provide a transparent, well-regulated marketplace for these companies and their investors.[5] As is currently the case with respect to the trading occurring on the Exchange pursuant to unlisted trading privileges, FINRA will regulate market activity and staff of the Exchange will monitor real-time trading of securities listed on BX.

The Exchange expects that the securities listed on BX will not be classified as national market system securities. As a result, BX-listed securities will not be subject to a national market system plan and will not be subject to Regulation NMS under

[3] *See* Securities Exchange Act Release No. 59265 (January 16, 2009), 74 FR 4790 (January 27, 2009) (approving SR–BSE–2008–36 relating to the delisting of all securities from the Exchange in connection with the Exchange's discontinuation of trading).

[4] The Exchange notes that not all qualitative requirements imposed by other exchanges would be required. *See* Listing Requirements, *infra,* for a full discussion of the proposed quantitative and qualitative requirements for listing on BX.

[5] The Exchange will propose in a separate rule filing changes to the BX Equities Platform to govern trading of, and reporting of transactions in, these listed securities and introducing and modifying market data products to permit dissemination of accurate quotation information and reporting of transactions.

the Act.[6] BX-listed securities will trade on the Exchange and could be traded over-the-counter.[7]

Listing Requirements

BX would list Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights and Warrants. To be listed on BX, companies will need to meet the following qualitative listing standards, each of which is equivalent to the comparable listing standard of Nasdaq or is derived from the Federal securities laws:

(a) The company must be registered under Section 12(b) of the Act[8] and current in its periodic filings with the Commission and, as a result, subject to the requirements of the Sarbanes-Oxley Act of 2002[9] (proposed Rule 5210(a));

(b) The company must have a fully independent Audit Committee comprised of at least three members and comply with the requirements of SEC Rule 10A–3, promulgated under the Act[10] (proposed Rule 5605(c));

(c) The company must have independent directors make compensation decisions for executive officers (proposed Rule 5605(d));

(d) The company will be prohibited from taking any corporate action with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of the company's common stock registered pursuant to Section 12 of the Act (proposed Rule 5640);

(e) The company's auditor will be required to be registered with the Public Company Accounting Oversight Board[11] (proposed Rules 5210(b) and 5250(c)(3));

(f) The company will be required to hold an annual shareholders' meeting and solicit proxies for each shareholders' meeting (proposed Rule 5620);

(g) The company will be required to obtain shareholder approval for the use of equity compensation (proposed Rule 5635);

(h) The company will be required to adopt a code of conduct, applicable to all directors, officers and employees (proposed Rule 5610);

(i) The company will be required to conduct an appropriate review and oversight of all related party transactions, to address potential conflict of interest situations (proposed Rule 5630);

(j) The company will be required to disclose material information through any Regulation FD compliant method (or combination of methods) (proposed Rule 5250(b) and IM–5250–1);

(k) The listed securities must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act[12] (proposed Rules 5210(c) and 5255);

(l) Public "shells" would not be allowed to list (proposed Rule 5101); and

(m) The Exchange will conduct a public interest review of the company and significant persons associated with it (proposed Rule 5101 and IM–5101–1).

In addition, BX would apply the following quantitative listing standards, set out in proposed Rules 5505 (initial listing) and 5550 (continued listing), which are designed to assure a minimum level of trading consistent with a public market for the securities:

(a) 200,000 publicly held shares;

(b) 200 public shareholders, at least 100 of which must be round lot holders for initial listing, and 200 public shareholders for continued listing;

(c) A market value of listed securities of at least $2 million for initial listing and $1 million for continued listing;

(d) Two market makers; and

(e) A minimum initial listing price of $0.25 per share for securities previously listed on a national securities exchange and $1.00 per share for securities previously quoted in the over-the-counter market. For continued listing, securities will be required to maintain a minimum $0.05 per share bid price.

Further, with respect to companies not previously listed on a national securities exchange, BX will also require for initial listing that the company have either $1 million stockholders' equity or $5 million total assets, a one year operating history, and a plan to maintain sufficient working capital for the company's planned business for at least twelve months after the first day of listing.

The Exchange would also require that rights and warrants will only be eligible for initial and continued listing if the underlying security is listed on BX or is a covered security, as described in Section 18(b) of the Securities Act of 1933.[13]

The proposed listing standards are designed to allow companies that are being delisted from another national securities exchange for failure to meet that exchange's quantitative listing requirements the opportunity to provide their investors with a better regulated, more transparent trading environment than may otherwise be available in the over-the-counter markets. In addition, the Exchange believes that allowing these companies to continue trading on a national securities exchange may enable some institutional investors to continue their ownership stake in the company, which could provide greater stability to the company's shareholder base and possibly avoid forced sales by such investors.[14] The Exchange also believes that companies currently traded over-the-counter could view this market as an aspirational step towards a listing on another national securities exchange. The Exchange believes that the agreement of such companies to comply with the Exchange's corporate governance standards and the application of the Exchange's public interest authority will provide additional protections to their investors than would be available in their present trading venue. Moreover, the Exchange believes that a BX listing could help such companies raise capital, in turn promoting job creation within the United States. Finally, the Exchange believes that BX will be a more attractive alternative to domestic companies that might otherwise have considered a listing on non-U.S. junior markets, which generally have lower listing requirements.

Nonetheless, the Exchange recognizes that the listing requirements for BX will be lower than those of the NASDAQ Stock Market and other national securities exchanges. As such, to avoid investor confusion, the listing rules of BX will specify that a BX-listed company should refer to its listing as on the "BX" market, unless otherwise required by applicable rules or regulations, and that such company should not represent that it is listed on The NASDAQ Stock Market. Similarly, in describing this listing venue, the Exchange will generally refer to it as "BX" and not as NASDAQ OMX BX.

The Exchange will have the discretionary authority to deny listing to any otherwise qualified security when

[6] 17 CFR 242.600–612.

[7] Over-the-counter trades of BX-listed securities would be reported to the FINRA Over-the-Counter Reporting Facility.

[8] 15 U.S.C. 781(b).

[9] 15 U.S.C. 7201–7266.

[10] 17 CFR 240.10A–3.

[11] *See* Section 102 of the Sarbanes-Oxley Act, 15 U.S.C. 7212.

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 77r(b).

[14] Many institutional investors have investment policies that limit their ownership to securities listed on a national securities exchange, or that prohibit the ownership of securities that only are traded in the over-the-counter market.

necessary to preserve and strengthen the quality of and public confidence in its market. Proposed IM–5101–1 provides a non-exclusive description of circumstances where the Exchange may exercise that discretion, including when an individual associated with the company has a history of regulatory misconduct. In that regard, the Exchange intends to conduct background investigations of officers and directors and other significant people associated with a company in connection with its review of applications for initial listing. The Exchange also will not approve for initial listing, or allow the continued listing, of shell companies.[15] This prohibition is based on concerns that the investors in shell companies are unaware of the ultimate business in which they are investing and that trading in such securities is more susceptible to market manipulation.

The Exchange proposes that any company that meets the quantitative (*e.g.,* financial) requirements for listing on Nasdaq will not be allowed to initially list on BX. This will assure that such companies only become listed on the exchange with higher listing standards.

Given that the Exchange expects to list companies that do not meet the quantitative listing requirements of the primary existing national securities exchanges, it is expected that BX-listed companies will include smaller companies and companies facing business or other challenges. Thus, the proposed quantitative standards for BX were deliberately structured to be lower than those of the other primary exchanges. In that regard, the minimum price requirement for listing on BX will be $0.25 per share for a security previously listed on another national securities exchange and $1.00 per share for a security previously quoted in the over-the-counter market or listing in connection with its initial public offering. Until March 31, 2011, the Exchange would consider any company that was listed on another national securities exchange at any time since January 1, 2008, to be eligible to list with a $0.25 per share price. The Exchange believes it appropriate to consider a company delisted since January 1, 2008, as previously quoted on another national securities exchange because the BX market would not have been available to such companies when they were delisted. The Exchange believes it is reasonable to look back to January 1, 2008, when the financial markets began facing difficulties, which resulted in an unusually large number of companies being delisted. Furthermore, the Exchange believes it is appropriate to continue this treatment until March 31, 2011, to assure that such companies have an adequate opportunity to learn about BX and sufficient time to complete their application and have that application processed by the Exchange. After March 31, 2011, a company will be considered to have been previously listed on a national securities exchange, and therefore eligible to list with a $0.25 per share price, only if it was listed on such an exchange at any time during the three months prior to its listing on BX. The Exchange believes that this three-month period will allow the company sufficient time to apply for listing on BX and have its application processed.

For continued listing, a security will be required to maintain a minimum $0.05 per share bid price.[16] If the security does not maintain a minimum $0.05 per share bid price for ten consecutive trading days, Exchange staff would issue a Staff Delisting Determination and the security would be suspended from trading on BX.[17] A company could appeal that determination to a Hearings Panel, however such an appeal would not stay the suspension of the security.[18] During the Hearings Panel process, the security could regain compliance by achieving a $0.05 per share minimum bid price while trading on another venue, such as the over-the-counter market, for 10 consecutive days. However, if the company has received three or more Staff Delisting Determinations for failure to comply with minimum price requirement in the prior 12 months, the company could only regain compliance by achieving a closing bid price of $0.25 per share or more for at least 10 consecutive trading days. The Exchange believes that this higher requirement for companies that were previously non-compliant is appropriate to reduce the likelihood of future instances of non-compliance and the concomitant investor confusion concerning the ability of the company to remain listed. If the Hearings Panel determines that the security has satisfied the applicable standard to regain compliance, the trading halt would be terminated and the security would resume trading on the Exchange.

To be eligible for initial listing, a company not previously listed on a national securities exchange must have at least one year operating history, a minimum of either $1 million in stockholders' equity or $5 million in total assets, and demonstrate that it has a plan to maintain sufficient working capital for its planned business for at least twelve months after the first day of listing. The Exchange believes that these requirements will help assure that a company that was not previously subject to exchange regulation nonetheless has a credible and sustainable business.

The Exchange believes that the proposed public float, holder and market maker requirements, together with the minimum market value of listed securities requirement, will assure sufficient liquidity in listed securities. In that regard, the Exchange notes that the shareholder and publicly held shares requirements are comparable to, or higher than, requirements for listing a preferred stock or secondary class of common stock on the Nasdaq Capital Market, which require 100 round lot shareholders and 200,000 publicly held shares. The Exchange is not aware of any difficulties in the trading in securities meeting these requirements. Further, requiring two market makers will assure competing quotations for potential buyers and sellers of the securities listed on BX. Finally, the Exchange believes that the minimum market value of listed securities requirement will help assure that the company issuing the securities is of a sufficient size to generate interest from investors and market participants. While these proposed standards may be lower than those of other exchanges, investors will be protected by the fact that securities listed on BX would be considered penny stocks under Exchange Act Rule 3a51–1, unless they qualify for an exemption from the definition of a penny stock.[19] As such, broker-dealers would be required to pre-approve their customers for trading in

[15] Proposed Rule 5101 sets forth a number of factors that the Exchange will consider in determining whether a Company is a shell, including whether the Company is considered a "shell company" as defined in Rule 12b–2 under the Act, 17 CFR 240.12b–2.

[16] The Exchange notes there is also no price requirement for initial or continued listing on the National Stock Exchange or for continued listing on NYSE Amex and therefore that the proposed continued listing requirement exceeds the requirement of those exchanges.

[17] Proposed Rule 4120(a)(12).

[18] Proposed Rule 5815(a)(1)(C).

[19] 17 CFR 240.3a51–1. The Exchange is not seeking an exemption from the penny stock rules for securities listed on BX, however a security may be excluded from the definition of a penny stock as a result of the security having a price in excess of $5 or its issuer having net tangible assets in excess of $2 million (if the issuer has been in continuous operation for at least three years) or $5 million (if the issuer has been in continuous operation for less than three years) or average revenue of at least $6 million for the last three years. Rule 3a51–1(d) and (g), 17 CFR 240.3a51–1(d) and (g).

penny stocks and investors will obtain the disclosures required to be made by broker-dealers in connection with penny stock transactions, providing them with trade and market information prior to effecting a transaction. Further, there will be no "blue sky" exemption available under Section 18 of the Securities Act of 1933,[20] so companies will be required to satisfy State law registration requirements and other State laws that regulate the sale and offering of securities.

The BX corporate governance requirements are generally comparable to those of the other exchanges. The Exchange would require that a listed company have an audit committee comprised of at least three independent directors that also meet the requirements of SEC Rule 10A–3.[21] For a director to be considered an independent director, the company's board would have to determine that the individual does not have a relationship which, in the board's opinion, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.[22] The board would be precluded from finding a director independent based on certain relationships, including if that director is currently an employee of the company or was employed by the company during the prior three years (including as an executive officer), accepted certain compensation or payments from the company during the prior three years, or had a family member with certain affiliations with the company.[23]

The audit committee would be required to have a charter setting out its responsibilities, including the committee's purpose of overseeing the accounting and financial reporting processes of the company and the audits of the company's financial statements and the responsibilities and authority necessary to comply with SEC Rule 10A–3.[24] The audit committee, or another independent body of the board, will also be required to conduct an appropriate review and oversight of any related party transaction.[25] The Exchange believes that this requirement will limit the potential for self-dealing in connection with any related party transactions.

The Exchange would also require that independent directors make compensation decisions concerning the chief executive officer and other executive officers.[26] Independent directors would be required to meet on a regular basis in executive sessions.[27] These requirements for audit committees, compensation decisions, and executive sessions are identical to those of Nasdaq and substantially similar to those of the other national securities exchanges and the Exchange believes they will serve to empower the independent directors of its listed companies.

While the Exchange would require that a listed company have at least three independent directors to satisfy the audit committee requirement described above, it would not require that a majority of the company's board of directors be independent or an independent nomination committee because the Exchange believes those requirements could impose significant additional costs on these smaller companies and therefore discourage companies from pursuing an otherwise beneficial listing. In that regard, given the significant responsibilities imposed on audit and compensation committee members, directors who serve on these committees are sometimes reluctant to serve on other committees. As such, if BX were to also require an independent nominations committee, companies may have to increase the size of their boards and add additional independent directors. Similarly, requiring that independent directors comprise a majority of a company's board could also require companies to add additional independent directors. In each case, the need to add independent directors would impose additional costs on the company.[28] Moreover, nothing in the Commission's rules or the Act mandate these requirements.[29] However, BX believes that the requirement for executive sessions of the independent directors will provide a forum for the independent directors to consider whether the governance structure of the company is appropriate and raise any concerns, notwithstanding the lack of a majority independence and nominations committee requirement.

Companies listing on BX will be permitted to phase in compliance with the audit committee and compensation committee requirements following their listing. With respect to the audit committee requirements, a company listing in connection with its initial public offering would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of the date of effectiveness of the company's registration statement; and all independent members within one year of the date of effectiveness of the company's registration statement. For this purpose, a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions in SEC Rule 10A–3(b)(1)(iv)(A), namely that the company was not, immediately prior to the effective date of its registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

With respect to the compensation committee requirement, a company listing in connection with its initial public offering, upon emerging from bankruptcy, or that otherwise was not subject to a substantially similar requirement prior to listing (such as a company only traded in the over-the-counter market) would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of listing; and all independent members within one year of listing. For this purposes, a company

[20] 15 U.S.C. 77r. Some State laws and regulations may provide an exemption from certain registration or "blue sky" requirements for companies listed on the Boston Stock Exchange, based on the higher listing standards previously applied by the former Boston Stock Exchange. Proposed Rule 5001 would provide that the Exchange will take action to delist any company listed on BX that attempts to rely on such an exemption. Companies will also agree not to rely on any such exemption as a provision of the BX Listing Agreement.

[21] 17 CFR 240.10A–3. *See* proposed Rule 5605(c)(2). Companies may be eligible for a phase-in or cure period with respect to certain of these requirements.

[22] Proposed Rule 5605(a)(2) and IM–5605–1. The proposed definition of an independent director is identical to Nasdaq's definition of an independent director.

[23] *Id.*

[24] Proposed Rule 5605(c)(1).

[25] Proposed Rule 5630.

[26] Proposed Rule 5605(d) and IM–5605–6. A company can satisfy this requirement by having their independent directors make these decisions in executive session, or by having independent directors sit on a compensation committee. If the company chooses to use a compensation committee and the committee is comprised of at least three members, one director who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee under exceptional and limited circumstances, provided the company makes appropriate disclosure. Of course the Exchange will adopt rules required by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act following the necessary SEC rulemaking related to that provision.

[27] Proposed Rule 5605(b).

[28] The 2008–2009 Director Compensation Report prepared by the National Association of Corporate Directors (available from *http://www.nacdonline.org/*) found that the median total direct compensation per director was $78,060 for smaller companies (defined as companies with annual revenues of $50 to $500 million).

[29] *See, e.g.,* Item 407(a) of Regulation S–K, which requires disclosure of non-independent directors who serve on nomination committees, implicitly allowing such service.

will be considered to be listing in conjunction with an initial public offering if immediately prior to listing it does not have a class of common stock registered under the Act.

A company that transfers to BX from another national securities exchange with a substantially similar requirement will be immediately subject to the audit and compensation committee requirements, provided that the company will be afforded the balance of any grace period afforded by the other market.

The Exchange will require companies to adopt a code of conduct applicable to all directors, officers and employees.[30] Any waivers of the code for directors or executive officers must be approved by the board and disclosed. The Exchange believes that this requirement will help promote the ethical behavior of individuals associated with companies listed on BX.

In addition, the Exchange will require shareholder approval when a company adopts or materially amends a stock option or purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants.[31] The Exchange would not require shareholder approval for other share issuances, however, given that the companies expected to list on the Exchange may have a greater need to issue shares more frequently or more quickly, due to their expected smaller size and the business challenges they may be facing. As such, the Exchange believes that the cost and delay associated with seeking approval for share issuances would discourage companies from pursuing an otherwise beneficial listing.[32] Nonetheless, the Exchange will require listed Companies to provide notice of any 5% change in its shares outstanding [33] and the Exchange Staff will review such issuances for public interest concerns, such as issuances significantly below the market price or for the benefit of related parties.

Review Process

Companies denied initial or continued listing would be afforded a review process similar to that contained in the existing Rule 4800 Series of the Exchange's rules, which was modeled on the process available to companies listed on Nasdaq.[34] The Exchange's Listing Qualifications staff only will be able to allow time-limited exceptions for certain deficiencies from the continued listing standards, such as the failure to file periodic reports, certain of the corporate governance requirements and any quantitative deficiency which does not contain a compliance period.[35] Other of the continued listing requirements would provide for automatic compliance periods, including the market maker, market value of publicly held shares and audit committee requirements.[36] If the company fails to timely solicit proxies or hold its annual meeting or fails to meet the minimum price requirement, or if staff has public interest concerns in connection with the company, Listing Qualifications staff will issue an immediate delisting letter to the company.[37] Any other deficiency would result in the Listing Qualifications staff issuing a Public Reprimand Letter or a delisting notification.[38] Hearings Panels composed of individuals not affiliated with the Exchange would be permitted to grant additional time to companies that received a delisting notification, or that were denied initial listing. A company could appeal a decision of the Hearings Panel to the Exchange Listing and Hearing Review Council, which is a committee appointed by the Exchange's Board to act for the Board with respect to listing decisions.[39] The Listing and Hearing Review Council decision would be final, unless it is called for a discretionary review by the Exchange Board.

Fees

Companies would be required to submit an application review fee of $7,500 with their application for listing on BX, and would be required to pay a $15,000 annual fee for the first class listed on the Exchange and $5,000 for each additional class. The annual fee would be pro-rated for a company's first year of their listing. The application review fee will allow the Exchange to recover some of the costs associated with the initial review of the company's application, including staff time and the systems supporting the initial review process. The annual fee would similarly offset the staff and system costs of continued monitoring of the company. The proposed application and annual fees are substantially less than those charged by other national securities exchanges.[40] Companies that were previously listed on Nasdaq would receive a credit, which can only be used to offset the annual fee, for any annual fees paid to Nasdaq during the same calendar year that they initially list on BX, for the months following their delisting from Nasdaq. The Exchange believes this credit is a reasonable allocation of fees under the Act because the Exchange and Nasdaq have the same ultimate parent, The NASDAQ OMX Group, Inc., and the company will have paid Nasdaq a non-refundable fee to provide similar services as those that will be provided by BX under its annual fee. As such, the Exchange believes it would be inequitable to charge the company a second fee in the same year to support the provision of those services.

Fees would also be assessed for certain one-time events, such as a $7,500 fee for substitution listing events, a $2,500 fee for record-keeping changes, and a $4,000 or $5,000 fee for a written or oral hearing, respectively. These fees are identical to those charged on Nasdaq.

Under Proposed Rule 5602, a company considering a specific action or transaction can request an interpretation from the Exchange, and in return, the Exchange will prepare a responsive letter as to how the rules apply to the proposed action or transaction. No company is required to request an interpretation, and staff will orally discuss the application of the Exchange's rules with companies without any additional charge. However, if the company seeks a written response, the Exchange proposes to charge a $15,000 fee to recoup the cost of staff's time in reviewing and responding to the request.[41] The Exchange believes that the fee is appropriate, as the written response is applicable only to the company that requests it. The Exchange also believes that the written interpretive process,

[30] Proposed Rule 5610.

[31] Proposed Rule 5635.

[32] In this regard, the proposed rules are comparable to the rules of the National Stock Exchange, which require shareholder approval for equity compensation issuances but not for other share issuances. *See* National Stock Exchange Rule 15.6.

[33] Proposed Rule 5250(e)(1).

[34] Nasdaq Listing Rules 5800–5899.

[35] Proposed Rule 5810(c)(2).

[36] Proposed Rule 5810(c)(3).

[37] Proposed Rule 5810(c)(1).

[38] Proposed Rule 5810(c).

[39] Section 6.1 of the By-Laws on NASDAQ OMX BX, Inc.

[40] For example, the initial listing fees for listing common stock on the NASDAQ Capital Market range from $50,000 to $75,000 and the annual fees are $27,500; the initial listing fees for listing common stock on NYSE Amex range from $50,000 to $70,000 and the annual fees range from $27,500 to $40,000; the initial listing fees for listing common stock on the New York Stock Exchange range from $150,000 to $250,000 and the annual fees range from $38,000 to $500,000. *See* Nasdaq Rule 5920(a)(1) and (c)(1)(A), NYSE Amex Listed Company Guide Sections 140 and 141, and NYSE Listed Company Manual 902.03.

[41] No fee would be charged in connection with requests involving a company's initial listing application given that the company will pay an application fee.

and the associated fee, will provide an additional public benefit in that staff will prepare anonymous summaries of interpretations, as well as frequently asked questions based on requests received from companies, including those withdrawn before a written response is issued. These summaries and questions will be posted on the Exchange's Web site so that the general public, practitioners, and other companies can better understand how the Exchange applies its rules and policies. In this way, the overall need to request such interpretations is minimized, thus reducing burdens on companies and staff alike.

Other Changes

As part of the proposed rule change, the Exchange is deleting portions of the Rule 4000 Series related to the listing and trading of securities eligible to be listed on BX and correcting cross-references to those deleted sections. The Exchange is maintaining those provisions of the Rule 4000 applicable to securities that will not be eligible to be listed on BX, such as Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts, Securities Linked to the Performance of Indexes and Commodities, and Managed Fund Shares, to enable the continued trading of such securities on the Exchange pursuant to unlisted trading privileges.

The Exchange is deleting Rule 4430, which provided listing criteria for limited partnership rollup transactions using language that was substantially similar to language contained in FINRA Rule 2310. Instead, the Exchange addresses these issues in proposed Rule 5210(h). This rule adopts the same approach taken by Nasdaq and NYSE AMEX by incorporating the FINRA rule by reference.[42] In this manner, BX satisfies the requirement of Section 6(b)(9) of the Exchange Act,[43] which requires that the rules of a national securities exchange prohibit certain limited partnership rollup transactions.

The Exchange is also moving the additional requirements applicable to the listing of securities issued by NASDAQ OMX or its affiliates from Rule 4370 to Rule 5701.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[44] in general and with Sections 6(b)(5) of the Act,[45] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed new listing venue will advance these goals by allowing qualified issuers to list on a transparent, well-regulated marketplace with increased transparency about the trading of these securities, thereby protecting investors and the public interest and helping to prevent fraudulent and manipulative acts and practices.

In addition, the Exchange believes that the proposed market is consistent with Section 17B of the Act, which codifies Congress' findings that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks and that a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market. Section 17B further instructs the Commission to facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks, as the Exchange will for securities listed on BX, through one or more automated quotation systems operated by a registered securities association or a national securities exchange, providing reliable pricing information and reporting of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10

[42] Nasdaq Rule 5210(h) and NYSE Amex Listed Company Guide Section 126.

[43] 15 U.S.C. 78f(b)(9).

[44] 15 U.S.C. 78f.

[45] 15 U.S.C. 78f(b)(5).

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–BX–2010–059 and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22296 Filed 9–7–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62814; File No. SR–NYSEAmex–2010–88]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (See Rule 107B—NYSE Amex Equities), currently scheduled to expire on September 30, 3010, until the earlier of the Securities and Exchange Commission's ("SEC" or "Commission") approval to make such Pilot permanent or January 31, 2011. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot,[3] currently scheduled to expire on September 30, 2010, until the earlier of Commission approval to make such Pilot permanent or January 31, 2011.

Background

In October 2008, the New York Stock Exchange LLC ("NYSE") implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the NYSE. These changes were all elements of the NYSE's and the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").[4] The NYSE SLP Pilot was launched in coordination with the NMM Pilot (see NYSE Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or "DMM."[5] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[6]

The NYSE adopted NYSE Rule 107B governing SLPs as a six-month pilot program commencing in November 2008. This NYSE pilot has been extended several times, most recently to September 30, 2010.[7] The NYSE is in the process of requesting an extension of their SLP Pilot until January 31, 2011 or until the Commission approves the pilot as permanent.[8] The extension of the NYSE SLP Pilot until January 31, 2011 runs parallel with the extension of the NMM pilot: January 31, 2011, or until the Commission approves the NMM Pilot as permanent.

Proposal To Extend the Operation of the NYSE Amex Equities SLP Pilot

NYSE Amex Equities established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. NYSE Amex Equities Rule 107B is based on NYSE Rule 107B. NYSE Amex Rule 107B was filed with the Commission on December 30, 2009, as a "me too" filing for immediate effectiveness as a pilot program.[9] The NYSE Amex Equities SLP Pilot is scheduled to end operation on September 30, 2010 or such earlier time as the Commission may determine to make the rules permanent.

The Exchange believes that the SLP Pilot, in coordination with the NMM

[46] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98) (establishing the NYSE Amex Equities SLP Pilot). *See also* Securities Exchange Act Release No. 61841 (April 5, 2010), 75 FR 18560 (April 12, 2010) (SR–NYSEAmex–2010–33) (extending the operation of the SLP Pilot to September 30, 2010). *See also* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009). *See also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009). *See also* Securities Exchange Act Release No. 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010). *See also* Securities Exchange Act Release No. 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the operation of the SLP Pilot to September 30, 2010).

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[5] *See* NYSE Rule 103.

[6] *See* NYSE and NYSE Amex Equities Rules 107B.

[7] *See* Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (adopting SLP pilot program); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending SLP pilot program until October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending SLP pilot program until November 30, 2009) and 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending SLP pilot program until March 30, 2010).

[8] *See* SR–NYSE–2010–62.

[9] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98).

Pilot and the NYSE SLP Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (NYSE Amex Equities Rule 107B) should be made permanent.

Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until January 31, 2011, in order to allow the Exchange to formally submit a filing to the Commission to convert the Pilot rule to a permanent rule. The Exchange is currently preparing a rule filing seeking permission to make the NYSE Amex Equities SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before September 30, 2010.[10]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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.

[10] The NMM Pilot was scheduled to expire on September 30, 2010 as well. On August 26, 2010 the NYSE filed to extend the NMM Pilot until January 31, 2011 (*See* SR–NYSE–2010–61) (extending the operation of the New Market Model Pilot to January 31, 2011).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–88 on the subject line.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). 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 the 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.

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–2010–88. 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–NYSEAmex–2010–88 and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22292 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62827; File No. SR–MSRB–2010–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendments to Rule A–3, on Membership on the Board To Comply With the Dodd-Frank Wall Street Reform and Consumer Protection Act

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") 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 MSRB. The MSRB has requested accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[3] The Board seeks accelerated effectiveness of the rule change in order to implement the Board composition requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act"), which has an effective date of October 1, 2010. The rule change must be effective prior to the effective date of the relevant provision of the Dodd-Frank Act so that the Board may elect a new Board for the 2011 fiscal year that complies with the Board composition provisions of the Dodd-Frank Act. 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 MSRB is filing with the SEC a proposed rule change consisting of amendments to Rule A–3, on membership on the Board, in order to facilitate the change in the composition of the Board to comply with the Dodd-Frank Act. The MSRB has requested that the proposed rule change be made effective on an accelerated basis.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx* 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)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 Board has prepared summaries, set forth in Section 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 such changes to MSRB Rule A–3 as are necessary and appropriate prior to the election of new Board members for the fiscal year commencing on October 1, 2010 (fiscal year 2011), in order to comply with the Dodd-Frank Act and, more specifically, those provisions of the Dodd-Frank Act governing the nomination, election, and composition of the Board. On July 21, 2010, the Dodd-Frank Act was signed into law by President Obama. This comprehensive financial reform legislation contains various provisions that affect the governance and mandate of the MSRB. The effective date of these provisions is October 1, 2010, which coincides with the first day of the MSRB's 2011 fiscal year.

The Dodd-Frank Act provides that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives, that the membership must be as evenly divided in number as possible between public and regulated representatives, and that the members be knowledgeable of matters related to the municipal securities markets.

As for the public members, at least one must be representative of institutional or retail investors in municipal securities, at least one must be representative of municipal entities and at least one must be a member of the public with knowledge of or experience in the municipal industry. As for regulated representatives, at least one must be associated with and representative of broker-dealers, at least one must be associated with and representative of bank dealers, and at least one must be associated with a municipal advisor. For the first time, the MSRB has been authorized to promulgate rules governing the conduct of municipal advisors who must be fairly represented on the Board.

Although Section 975(b) of the Dodd-Frank Act provides that the Board shall be composed of 15 members, the same section permits the Board to increase the number of Board members, so long as the total membership is an odd number. It also requires that the public members be independent, as defined by the Board, of entities regulated by the MSRB.

In order to implement these terms of the Dodd-Frank Act by the effective date of October 1, 2010, the MSRB proposes a rule change to add sections (h) and (i) to Rule A–3. Section (h) defines certain terms consistent with the Dodd-Frank Act, including the term "independent of any municipal securities broker, municipal securities dealer, or municipal advisor," which is similar to the independence definition used by other self-regulatory organizations. The term "independent of any municipal securities broker, municipal securities dealer, or municipal advisor" would mean that the individual has "no material business relationship" with any municipal securities broker, municipal securities dealer, or municipal advisor. The term "no material business relationship," in turn, would mean that, at a minimum, the individual is not and, within the last two years, was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual does not have a relationship with any municipal securities broker, municipal securities dealer, or municipal advisor, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. The Board, or by delegation its Nominating Committee, may determine that additional circumstances involving the individual constitute a "material business relationship" with a municipal securities broker, municipal securities dealer, or municipal advisor.

Section (i) is a transitional provision intended to effectuate the relevant governance provisions of the Dodd-Frank Act by increasing the Board from 15 members to 21 members, who are knowledgeable of matters related to the municipal securities markets, 11 of whom will be independent, public representatives and 10 of whom will be regulated representatives, as of October 1, 2010. Of the 11 public members, at least one will be representative of institutional or retail investors, at least one will be representative of municipal entities, and at least one will be a member of the public with knowledge of or experience in the municipal industry.

Of the 10 regulated representatives, at least one will be associated with and representative of broker-dealers, at least one will be associated with and representative of bank dealers, and at least one, and not less than 30% of the total number of regulated representatives, will be associated with and representative of municipal advisors. The Board believes that such composition is fair to each regulated constituency and to the public.

In order to achieve this composition, the Board must elect 11 new members—eight public representatives and three municipal advisor representatives—prior to the start of the 2011 fiscal year. Although the Board had previously published a notice under the existing provisions of paragraph (a)(iii)(c) of Rule A–3 soliciting nominations of Board candidates for fiscal year 2011, in order to ensure a fair nomination process, the transition rule provides for a second publication, on or after enactment of the Dodd-Frank Act, of a notice in a national financial journal soliciting nominations for municipal advisor candidates, with the Nominating Committee accepting recommendations pursuant to such notice for a period of at least 14 days from the date of publication.[4]

Finally, the rule change provides that, in fiscal year 2011, the Board will amend Rule A–3(c) and make other changes consistent with the Act and the Dodd-Frank Act.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b) of the Act, as amended by the Dodd-Frank Act, in that it conforms the composition of the Board to the requirements of the Dodd-Frank Act as more fully described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board 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 since it provides for fair representation on the Board of public representatives, broker dealer representatives, bank dealer representatives and municipal advisor representatives.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission seeks comments on all aspects of the MSRB's proposed rule change, including the proposed composition of the MSRB Board and whether the number and proportion of public representatives, broker-dealer representatives, bank representatives, and advisor representatives is appropriate. Because the MSRB, under the Dodd-Frank Act, now will be proposing and adopting rules with respect to the activities of two distinct categories of market participants—municipal securities dealers and municipal securities advisors—is the proposed structure of the MSRB Board designed to assure that the interests of each are appropriately represented, and that a fair and effective regulatory regime will be implemented both for municipal securities dealers and municipal securities advisors? Are there alternative Board structures or other governance arrangements that would better achieve these goals? Is increasing the size of the MSRB Board the appropriate way to accommodate the new representation required by the Dodd-Frank Act, or should the new representation be accomplished by reconstituting the current Board? Will increasing the size of the MSRB Board negatively impact its ability to operate effectively? 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–MSRB–2010–08 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–MSRB–2010–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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–MSRB–2010–08 and should be submitted on or before September 22, 2010.[5]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22414 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

[4] The MSRB published such additional notice on July 22, 2010, pursuant to which it received a number of additional recommendations for persons to serve as municipal advisor representatives on the Board.

[5] The Commission believes that a 14-day comment period is reasonable, given the urgency of the matter. It will provide adequate time for comment.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62796; File No. SR–FICC–2010–06]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Relating to Authority To Waive Rules, Procedures, and Regulations of the Mortgage-Backed Securities Division

August 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 20, 2010, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC.[2] FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(3) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend FICC rules to provide that any officer having a rank of Managing Director or higher is authorized to suspend or waive FICC's rules, procedures, and regulations of the Mortgage-Backed Securities Division.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Rule 12 of Article V of the Clearing Rules ("Rules") of the Mortgage-Backed Securities Division ("MBSD") to state that the rules, procedures, and regulations may be suspended or waived by any officer having a rank of Managing Director or higher. Currently Rule 12 provides such authority to officers with the ranking of Vice President or higher.[5] This proposed rule change also harmonizes MBSD rules with those of FICC's Government Securities Division ("GSD") as well as those of The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") as such rule relates to the authority to suspend or waive rules.[6]

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder that are applicable to FICC because the proposed rule will require a more senior level of management to authorize a suspension or waiver of the FICC rules under the proposed rule change thereby ensuring more equitable compliance with FICC's rules and procedures. The proposed rule change also harmonizes the MBSD rules with those of the GSD thereby providing clarity for FICC's members on its administration of waivers and suspension of FICC's rules and procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC 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 relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by the FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(3)[9] thereunder because it is concerned solely with the administration of FICC. At any time within sixty days of the filing of such 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–FICC–2010–06 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–FICC–2010–06. 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

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

[2] The text of the proposed rule change is attached as Exhibit 5 to FICC's filing and is available at *http://www.dtcc.com/downloads/legal/rule_filings/2010/ficc/2010-06.pdf*.

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(3).

[4] The Commission has modified the text of the summaries prepared by the FICC.

[5] Managing Director level is a more senior officer than that of Vice President.

[6] On August 23, 2010, DTC and NSCC filed similar rule changes. Securities Exchange Act Release No. 62795 (August 30, 2010) [File No. SR–DTC–2010–11] and 62794 (August 30, 2010) [File No. SR–NSCC–2010–08] respectively.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site, *http://www.dtcc.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–FICC–2010–06 and should be submitted on or before September 29, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22351 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62788; File No. SR–NYSEArca–2010–79]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing and Trading of Cambria Global Tactical ETF

August 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 23, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Cambria Global Tactical ETF under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[3] ("Shares") under NYSE Arca Equities Rule 8.600: the Cambria Global Tactical ETF ("Fund").[4] The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment advisor to the Fund is AdvisorShares Investments, LLC (the "Advisor"). Cambria Investment Management, Inc. is the Fund's sub-advisor ("Cambria" or "Sub-Advisor") and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC (the "Distributor") is the principal underwriter and distributor of the Fund's Shares. Neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.[6]

Description of the Fund

According to the Registration Statement, the Fund's investment objective is to preserve and grow capital from investments in the U.S. and foreign equity, fixed income, commodity and currency markets, independent of market direction. The Fund seeks to preserve and grow capital by producing absolute returns with reduced volatility and manageable risk and drawdowns. The Fund's investment strategies are inherently designed as risk-management and capital preservation approaches. The Fund is an actively managed ETF and thus, does not seek to replicate the performance of a specific index, but rather uses an active investment strategy to meet its investment objective.

The Fund is considered a "fund-of-funds" that seeks to achieve its investment objective by primarily investing in other exchange-traded funds listed and traded in the United States (the "Underlying ETFs") that offer

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Exchange-Traded Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF).

[5] The Trust is registered under the 1940 Act. On June 30, 2010, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

[6] The Exchange represents that the Advisor and Sub-Advisor and their related personnel are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

diversified exposure, including inverse exposure to: Global regions, countries, styles (market capitalization, value, growth, *etc.*) or sectors, and exchange-traded products, including but not limited to: Exchange-traded notes ("ETNs"), exchange-traded currency trusts and closed-end funds. In addition, as described below, from time to time and to a lesser extent, the Fund may invest in individual equities (stocks), futures contracts, options (calls or puts) in an attempt to limit portfolio risk or enhance returns. The Fund charges its own expenses and also indirectly bears a proportionate share of the Underlying ETFs' expenses.

According to the Registration Statement, the Fund will invest in Underlying ETFs spanning all the major world asset classes including equities, bonds, real estate, commodities, and currencies. The Underlying ETFs are themselves registered investment companies, the shares of which trade on a national securities exchange. The Underlying ETFs will track the performance of a securities index representing an asset class, sector or other market segment.

The Sub-Advisor will utilize a quantitative approach with strict risk management controls to actively manage the Fund's portfolio in an attempt to control downside losses and protect capital. The Fund's portfolio will be rebalanced to target allocations at least monthly and as often as weekly. The Fund's strategy utilizes a proprietary quantitative trend-following approach to actively manage a diversified portfolio of world asset classes. The strategy is diversified across markets and timeframes with strict risk control methods that are completely rules-based and systematic. According to the Registration Statement, no effort is made to forecast future market trends or direction; rather, the Fund intends to capture profits in these trends when and where they develop.

The Sub-Advisor will select a group of Underlying ETFs and other exchange-traded products for the Fund pursuant to an "active" management strategy for asset allocation, security selection and portfolio construction. The Fund allocates its assets among a group of Underlying ETFs in different percentages of stocks, bonds, commodities and cash that seek to achieve a unique investment objective and the Fund will periodically change the composition of its portfolio to best meet its investment objective.

The Fund currently intends to invest primarily in the securities of Underlying ETFs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the SEC or interpretation thereof. The Underlying ETFs in which the Fund will invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index.

The Fund may invest in ETNs. ETNs are debt obligations of investment banks which are traded on exchanges and the returns of which are linked to the performance of market indexes. The Fund may invest in closed-end funds, pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

The Fund and the Underlying ETFs may invest in equity securities. Equity securities represent ownership interests in a company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

The Fund may use futures contracts and related options for *bona fide* hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. To the extent the Fund uses futures and/or options on futures, it will do so in accordance with Rule 4.5 under the Commodity Exchange Act ("CEA").

The Fund may purchase and write put and call options on indices and enter into related closing transactions.

The Fund may purchase or hold illiquid securities, including securities that are not readily marketable and securities that are not registered ("restricted securities") under the Securities Act of 1933 (the "1933 Act"), but which can be offered and sold to "qualified institutional buyers" under Rule 144A under the 1933 Act. The Fund will not invest more than 15% of the Fund's net assets in illiquid securities. The term "illiquid securities" for this purpose means securities that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities.

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy. The Fund may buy and sell stock index futures contracts with respect to any stock index traded on a recognized stock exchange or board of trade. The Fund may enter into swap agreements, including, but not limited to, equity index swaps and interest rate swap agreements.

The Fund, or the ETFs in which it invests, may invest in U.S. government securities. The Fund, from time to time, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (*i.e.,* delivery and payment can take place between a month and 120 days after the date of the transaction). The Fund may invest in U.S. Treasury zero-coupon bonds. To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality short-term debt securities and money market instruments.

Except for Underlying ETFs that may hold non-US issues, the Fund will not otherwise invest in non-U.S. issues.

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.[7]

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as "Creation Units". According to the Registration Statement, the Shares of the Fund are "created" at their net asset value ("NAV") by market makers, large investors and institutions only in block-size Creation Units of 50,000 shares or more. A "creator" enters into an authorized participant agreement (a "Participant Agreement") with the Fund's Distributor or a Depository Trust Company participant that has executed a Participant Agreement with the Distributor (an "Authorized Participant"), and deposits into the Fund a portfolio of securities

[7] According to the Registration Statement, one of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (the "90% Test"). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership (the "Asset Test").

closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 50,000 shares of the Fund (or multiples thereof). Similarly, shares can only be redeemed in Creation Units, generally 50,000 shares or more, principally in-kind for a portfolio of securities held by the Fund and a specified amount of cash together totaling the NAV of the Creation Unit(s). Shares are not redeemable from the Fund except when aggregated in Creation Units. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in a form prescribed in the Participant Agreement.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [8] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[9] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[10]

On a daily basis, for each portfolio security of the Fund, the Fund will disclose on its Web site the following information: Ticker symbol, name of security, number of shares held in the portfolio, and percentage weighting of the security in the portfolio. On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange ("NYSE") via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session by one or more major market data venders. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[11] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all

[8] 17 CFR 240.10A–3.

[9] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[10] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[11] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG.[12]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–79. 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–

[12] For a list of the current members of ISG, *see http://*. The Exchange may obtain information from futures exchanges with which the Exchange has entered into a surveillance sharing agreement or that are ISG members. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[13] 15 U.S.C. 78f(b)(5).

NYSEArca–2010–79 and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22286 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62795; File No. SR–DTC–2010–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Relating to Authority To Suspend or Waive DTC Rules and Procedures

August 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 23, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC.[2] DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(3) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend DTC rules to provide that any officer having a rank of Managing Director or higher is authorized to suspend or waive DTC rules and procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Rule 18 of the DTC's Rules, Bylaws and Organization Certificate of The Depository Trust Company[5] ("Rules") to state that the Rules and procedures of DTC may be suspended or waived by any officer having a rank of Managing Director or higher. Prior to the proposed amendment, Rule 18 provided such authority to officers having a rank of Vice President or higher.[6] This proposed rule change also harmonizes DTC's rules with those of the Fixed Income Clearing Corporation's ("FICC") Government Securities Division and Mortgage-Backed Securities Division as well as those of the National Securities Clearing Corporation ("NSCC") as the rules relate to the authority to suspend or waive rules.[7]

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder that are applicable to DTC because the proposed rule will require a more senior level of management to authorize a suspension or waiver of DTC rules under the proposed rule change thereby ensuring more equitable compliance with DTC's rules and procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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 relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(3)[10] thereunder because it is concerned solely with the administration of DTC. At any time within sixty days of the filing of such 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–DTC–2010–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2010–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[14] 17 CFR 200.30–3(a)(12).

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

[2] The text of the proposed rule change is attached as Exhibit 5 to DTC's filing and is available at *http://www.dtcc.com/downloands/legal/rule_filings/2010/dtc/2010-11.pdf.*

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(3).

[4] The Commission has modified the text of the summaries prepared by the DTC.

[5] DTC's rules are available at *http://www.dtcc.com/legal/rules_proc/dtc_rules.pdf.*

[6] Managing Director is a more senior level of officer than that of Vice President.

[7] On August 20, 2010, FICC filed and on August 23, 2010, NSCC filed similar rule changes. Securities Exchange Act Release No. 62796 (August 30, 2010) [SR–FICC–2010–06] and 62794 (August 30, 2010) [File No. SR–NSCC–2010–08] respectively.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site, *http://www.dtcc.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–DTC–2010–11 and should be submitted on or before September 29, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22350 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62794; File No. SR–NSCC–2010–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Relating to Authority To Suspend or Waive NSCC Rules and Procedures

August 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 23, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC.[2] NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(3) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend NSCC rules to provide that any officer having a rank of Managing Director or higher is authorized to suspend or waive NSCC rules and procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Rule 22 of the NSCC's Rules and Procedures[5] to state that the rules and procedures of NSCC may be suspended or waived by any officer having a rank of Managing Director or higher. Prior to the proposed amendment, Rule 22 provided such authority to officers having a rank of Vice President or higher.[6] This proposed rule change will also harmonize NSCC's rules with those of FICC's ("FICC") Government Securities Division and Mortgage-Backed Securities Division, and with those of The Depository Trust Company ("DTC") as such rules relate to the authority to suspend or waive rules.[7]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder that are applicable to NSCC because the proposed rule will require a more senior level of management to authorize a suspension or waiver of the NSCC rules under the proposed rule change, thereby ensuring more equitable compliance with NSCC's rules and procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by the NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(3)[10] thereunder because it is concerned solely with the administration of NSCC. At any time within sixty days of the filing of such 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–NSCC–2010–08 on the subject line.

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[11] 17 CFR 200.30–3(a)(12).

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

[2] The text of the proposed rule change is attached as Exhibit 5 to NSCC's filing and is available at *http://www.dtcc.com/downloands/legal/rule_filings/2010/nscc/2010–08.pdf.*

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(3).

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] NSCC's rules are available at *http://www.dtcc.com/legal/rules_proc/dtc_rules.pdf.*

[6] Managing Director is a more senior level of officer than that of Vice President.

[7] On August 20, 2010, FICC filed and on August 23, 2010, DTC filed similar rule changes. Securities Exchange Act Release No. 62796 (August 30, 2010) [SR–FICC–2010–06] and 62795 (August 30, 2010) [File No. SR–DTC–2010–11] respectively.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

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–NSCC–2010–08. 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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.dtcc.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–NSCC–2010–08 and should be submitted on or before September 29, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22349 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62805; File No. SR–ISE–2010–90]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

August 31, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase liquidity and attract order flow by amending its transaction fees and rebates for adding and removing liquidity ("maker/taker fees").[3] The Exchange's maker/taker fees currently apply to the following categories of market participants: (i) Market Maker; (ii) Market Maker Plus;[4] (iii) Non-ISE Market Maker;[5] (iv) Firm Proprietary; (v) Customer (Professional);[6] (vi) Priority Customer,[7] 100 or more

[3] These fees are similar to the "maker/taker" fees currently assessed by NASDAQ OMX PHLX ("PHLX"). PHLX currently charges a fee for removing liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, (iv) Firm, (v) Broker-Dealer, and (vi) Professional. PHLX also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, and (iv) Professional. PHLX also charges a fee for adding liquidity to the following class of market participants: (i) Firm, and (ii) Broker-Dealer. *See* Securities Exchange Act Release Nos. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010); 61932 (April 16, 2010), 75 FR 21375 (April 23, 2010); 61961 (April 22, 2010), 75 FR 22881 (April 30, 2010); and 62472 (July 8, 2010), 75 FR 41250 (July 15, 2010).

[4] A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that market maker during that month. The Exchange provides market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the Exchange's stated criteria.

[5] A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

contracts; and (vii) Priority Customer, less than 100 contracts.[8]

Current Transaction Charges for Adding and Removing Liquidity

The Exchange currently assesses a per contract transaction charge to market participants that remove, or "take," liquidity from the Exchange in the following options classes: PowerShares QQQ trust ("QQQQ"), Bank of America Corporation ("BAC"), Citigroup, Inc. ("C"), Standard and Poor's Depositary Receipts/SPDRs ("SPY"), iShares Russell 2000 ("IWM"), Financial Select Sector SPDR ("XLF"), Apple, Inc. ("AAPL"), General Electric Company ("GE"), JPMorgan Chase & Co. ("JPM"), Intel Corporation ("INTC"), Goldman Sachs Group, Inc. ("GS"), Research in Motion Limited ("RIMM"), AT&T, Inc. ("T"), Verizon Communications, Inc. ("VZ"), United States Natural Gas Fund ("UNG"), Freeport-McMoRan Copper & Gold, Inc. ("FCX"), Cisco Systems, Inc. ("CSCO"), Diamonds Trust, Series 1 ("DIA"), Amazon.com, Inc. ("AMZN"), United States Steel Corporation ("X"), Alcoa Inc. ("AA"), American International Group, Inc. ("AIG"), American Express Company ("AXP"), Best Buy Company ("BBY"), Caterpillar, Inc. ("CAT"), Chesapeake Energy Corporation ("CHK"), Dendreon Corporation ("DNDN"), iShares MSCI Emerging Markets Index Fund ("EEM"), iShares MSCI EAFE Index Fund ("EFA"), iShares MSCI Brazil Index Fund ("EWZ"), Ford Motor Company ("F"), Direxion Shares Financial Bull ("FAS"), Direxion Shares Financial Bear ("FAZ"), First Solar, Inc. ("FSLR"), Market Vectors ETF Gold Miners ("GDX"), SPDR Gold Trust ("GLD"), iShares DJ US Real Estate Index Fund ("IYR"), MGM Mirage ("MGM"), Morgan Stanley ("MS"), Microsoft Corporation ("MSFT"), Micron Technology, Inc. ("MU"), Petroleo Brasileiro S.A. ("PBR"), The Procter & Gamble Company ("PG"), Potash Corporation of Saskatchewan ("POT"), Transocean Ltd. ("RIG"), ProShares UltraShort S&P 500 ("SDS"), iShares Silver Trust ("SLV"), Energy Select Sector SPDR Fund ("XLE"), Exxon Mobil Corporation ("XOM"), Barrick Gold Corporation ("ABX"), Bristol-Myers Squibb Company ("BMY"), BP p.l.c. ("BP"), ConocoPhillips ("COP"), Dell Computer Corporation ("DELL"), Dryships Inc. ("DRYS"), iShares Trust FTSE/Xinhua China 25 Index Fund ("FXI"), Halliburton Company ("HAL"), International Business Machines Corporation ("IBM"), The Coca-Cola Company ("KO"), Las Vegas Sands Corp. ("LVS"), McDonald's Corporation ("MCD"), Altria Group Inc. ("MO"), Monsanto Company ("MON"), Nokia Oyj ("NOK"), Oracle Corporation ("ORCL"), Pfizer Inc. ("PFE"), QUALCOMM Inc ("QCOM"), Sprint Corporation ("S"), Schlumberger Limited ("SLB"), Semiconductor HOLDRs Trust ("SMH"), SanDisk Corporation ("SNDK"), Proshares Ultrashort Lehman ("TBT"), United States Oil Fund ("USO"), Visa Inc ("V"), Companhia Vale Do Rio Doce ("VALE"), Weatherford International Inc. ("WFT"), Industrial Select Sector SPDR ("XLI"), SPDR S&P Retail ETF ("XRT"), and Yahoo! Inc. ("YHOO") (the "Select Symbols"). The per contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.[9] Priority Customer Complex orders, regardless of size, are not assessed a fee for removing liquidity.

The Exchange also currently assesses transaction charges for adding liquidity in options on the Select Symbols. Priority Customer orders, regardless of size, and Market Maker Plus orders are not assessed a fee for adding liquidity.

Current Rebates

In order to promote and encourage liquidity in options classes that are subject to maker/taker fees, the Exchange currently offers a $0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.[10] Further, in order to incentivize members to direct retail orders to the Exchange, Priority Customer Complex orders, regardless of size, currently receive a rebate of $0.20 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Orderbook. Additionally, the Exchange's Facilitation Mechanism has an auction which allows for participation in a trade by members other than the member who entered the trade. To incentivize members, the Exchange currently offers a rebate of $0.15 per contract to contracts that do not trade with the contra order in the Facilitation Mechanism. This rebate is also offered to contracts that do not trade with the contra order in the Price Improvement Mechanism.

Fee Changes

The Exchange proposes to remove the following options class from the Exchange's maker/taker fee schedule: DRYS.

The Exchange also proposes to add the following options classes to the Exchange's maker/taker fee schedule: Akamai Technologies ("AKAM"), Advanced Micro Devices Inc. ("AMD"), AMR Corporation ("AMR"), Anadarko Petroleum Corporation ("APC"), The Boeing Company ("BA"), Baidu Inc. ("BIDU"), Broadcom Corporation ("BRCM"), Goldcorp Inc. ("GG"), Hewlett-Packard Company ("HPQ"), US Airways Group Inc. ("LCC"), Motorola Inc. ("MOT"), Newmont Mining Corporation ("NEM"), NetFlix Inc. ("NFLX"), NVIDIA Corporation ("NVDA"), ProShares UltraShort QQQ ("QID"), ProShares Ultra S&P 500 ("SSO"), Teva Pharmaceutical Industries Ltd. ("TEVA"), iShares Lehman Brothers 20+ year Treasury Bond Index ETF ("TLT"), Direxion Small Cap Bear 3X ("TZA"), UAL Corp. ("UAUA"), Wells Fargo & Company ("WFC") and Materials Select Sector SPDR ("XLB") (the "Additional Select Symbols").

Other Fees

- Fees for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.
- Complex orders executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.
- ISE Market Makers who remove liquidity in the Select Symbols and the Additional Select Symbols from the Complex Order Book by trading with orders that are preferenced to them are charged $0.25 per contract.
- Payment for Order Flow fees will not be collected on transactions in

[8] The Chicago Board Options Exchange ("CBOE") currently makes a similar distinction between large size customer orders that are fee liable and small size customer orders whose fees are waived. CBOE currently waives fees for customer orders of 99 contracts or less in options on exchange-traded funds ("ETFs") and Holding Company Depositary Receipts ("HOLDRs") and charges a transaction fee for customer orders that exceed 99 contracts. *See* Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009).

[9] Although these options classes will no longer be subject to the tiered market maker transaction fees, the volume from these options classes will continue to be used in the calculation of the tiers so that this new pricing does not affect a market maker's fee in all other names.

[10] The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a $0.20 per contract rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. *See* Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. *See* Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

options overlying the Select Symbols and the Additional Select Symbols.[11]

• The Cancellation Fee will continue to apply to options overlying the Select Symbols and the Additional Select Symbols.[12]

• The Exchange has a $0.20 per contract fee credit for members who, pursuant to Supplementary Material .02 to Rule 803, execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.[13] For options overlying the Select Symbols and the Additional Select Symbols, the Exchange provides a $0.10 per contract fee credit for members who execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.

• The Exchange has a $0.20 per contract fee for market maker orders sent to the Exchange by EAMs.[14] Market maker orders sent to the Exchange by EAMs will be assessed a fee of $0.25 per contract for removing liquidity in options overlying the Select Symbols and the Additional Select Symbols and $0.10 per contract for adding liquidity in options overlying the Select Symbols and the Additional Select Symbols.

The Exchange has designated this proposal to be operative on September 1, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols and the Additional Select Symbols. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees it charges for options overlying the Select Symbols and the Additional Select Symbols remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. Additionally, the Exchange believes that the addition and removal of option classes that are subject to the Exchange's maker/taker fees is both equitable and reasonable because those fees apply to all categories of participants in the same manner. The Exchange's maker/taker fees, which are currently applicable to each market participant, will continue to apply to the Select Symbols and the Additional Select Symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[15] and Rule 19b–4(f)(2)[16] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–90 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2010–90 and should be submitted on or before September 29, 2010.

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[11] ISE currently has a payment-for-order-flow ("PFOF") program that helps the Exchange's market makers establish PFOF arrangements with an Electronic Access Member ("EAM") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM") and Competitive Market Makers ("CMM"), depending to whom the order is preferenced.

[12] The Exchange assesses a Cancellation Fee of $2.00 to EAMs that cancel at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. All orders from the same clearing EAM executed in the same underlying symbol at the same price within a 300 second period are aggregated and counted as one executed order for purposes of this fee. This fee is charged only to customer orders.

[13] *See* Securities Exchange Act Release No. 61731 (March 18, 2010), 75 FR 14233 (March 24, 2010).

[14] *See* Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

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

[16] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22290 Filed 9–7–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62817; File No. SR–ISE–2010–92]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's MRVP

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2010, the International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 1614 (Imposition of Fines for Minor Rule Violations) to incorporate a violation of ISE Rule 415 (Reports Related to Position Limits) into the Minor Rule Violation Plan. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend ISE Rule 1614 to incorporate violations for failing to accurately report position and account information in accordance with ISE Rule 415 into the Minor Rule Violation Plan. The Exchange believes most of these violations are inadvertent and technical in nature. Processing routine violations under the Minor Rule Violation Plan would decrease the administrative burden of regulatory and enforcement staff as well as that of the Business Conduct Committee. In addition, staff would be able to more expeditiously process routine violations under the Minor Rule Violation Plan.

ISE is proposing to assess a $500 fine for a first offense, a $1,000 fine for a second offense and a $2,500 fine for a third offense. Any subsequent offenses would be assessed a $5,000 fine. The number of offenses will be calculated on a rolling twenty-four month period. ISE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

Among other things, ISE Rule 415 requires each member to report to the Exchange the account and position information of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. Members report this information on the Large Option Position Report. ISE, as a member of the Intermarket Surveillance Group (the "ISG"), as well as certain other self-regulatory organizations ("SROs") executed and filed on October 29, 2007 with the Commission, a final version of the Agreement pursuant to Section 17(d) of the Act (the "Agreement")[3] and as amended on April 11, 2008[4] and October 9, 2008.[5] The participants to the Agreement incorporated the surveillance and sanctions of large options position reporting violations into the Agreement as of November 1, 2008. As such, the SROs have agreed that their respective rules concerning the reporting of large options positions are common rules. As a result, this amendment to the Minor Rule Violation Plan will further result in the consistency of the sanctions among the SROs who are signatories to the Agreement with respect to regulatory actions arising from large option position reporting surveillance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and 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, allowing the Exchange to have consistency between its Minor Rule Violation Plan and the Minor Rule Violation Plan of other SROs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 34–56941 (December 11, 2007).

[4] *See* Securities and Exchange Act Release No. 34–57649 (April 11, 2008).

[5] *See* Securities and Exchange Act Release No. 34–58765 (October 9, 2008).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–92. 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, 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–ISE–2010–92 and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22295 Filed 9–7–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62813; File No. SR–NYSE–2010–62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of NYSE's Supplemental Liquidity Providers Pilot

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (see Rule 107B), currently scheduled to expire on September 30, 2010, until the earlier of the Securities and Exchange Commission's ("SEC" or "Commission") approval to make such pilot permanent or January 31, 2011. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot,[3] currently scheduled to expire on September 30, 2010, until the earlier of Commission approval to make such pilot permanent or January 31, 2011.

Background[4]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009). *See also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009). *See also* Securities Exchange Act Release No. 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010). *See also* Securities Exchange Act Release No. 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the operation of the SLP Pilot to September 30, 2010).

[4] The information contained herein is a summary of the NMM Pilot and the SLP Pilot, for a fuller description of those pilots *see supra* notes 1 [sic] and 2 [sic].

participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").[5] The SLP Pilot was launched in coordination with the NMM Pilot (see Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[6] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[7]

The SLP Pilot is scheduled to end operation on September 30, 2010 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before September 30, 2010.[8]

Proposal To Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent. Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until January 31, 2011, in order to allow the Exchange to formally submit a filing to the Commission to convert the pilot rule to a permanent rule.[9]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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[10] and Rule 19b–4(f)(6) thereunder.[11] 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[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–62. 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

[5] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[6] *See* NYSE Rule 103.

[7] *See* NYSE Rule 107B.

[8] The NMM Pilot was scheduled to expire on September 30, 2010. On August 26, 2010 the Exchange filed to extend the NMM Pilot until January 31, 2011 (*See* SR–NYSE–2010–61) (extending the operation of the New Market Model Pilot to January 31, 2011); *See also* Securities Exchange Act Release No. 61724 (March 17, 2010), 75 FR 14221 (SR–NYSE–2010–25) (extending the operation of the New Market Model Pilot to September 30, 2010). *See also* Securities Exchange Act Release No. 61031 (November 19, 2009), 74 FR 62368 (SR–NYSE–2009–113) (extending the operation of the New Market Model Pilot to March 30, 2010).

[9] The NYSE Amex SLP Pilot (NYSE Amex Equities Rule 107B) is also being extended until January 31, 2011 or until the Commission approves it as permanent (*See* SR–NYSEAmex–2010–88).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). 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 the 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.

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–NYSE–2010–62 and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22291 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62804; File No. SR–BX–2010–060]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

August 31, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"), effective September 1, 2010, to assess the Options Regulatory Fee to each BOX Market Maker or Order Flow Provider that is fully certified to transact business on the Exchange. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the circumstances under which the Exchange will assess the Options Regulatory Fee. In particular, the Exchange will assess the Options Regulatory Fee to BOX Options Participants that (i) are registered with the Exchange pursuant to Chapter II of the Rules of BOX; and (ii) have satisfied the technological requirements to be a fully certified BOX Market Maker or Order Flow Provider. Market Makers and Order Flow Providers are not capable of transacting business on the Exchange until the firm has been technologically certified by BOX ("fully certified"). In certain instances, particularly at the outset of becoming a Participant, a Market Maker or an Order Flow Provider may be registered with the Exchange prior to obtaining the requisite technological certification. BOX believes that it is not equitable to assess the Options Regulatory Fee on a Market Maker or Order Flow Provider that, prior to initially satisfying certain technology requirements, is not capable of availing itself of the benefits of its status as a BOX Participant. BOX does not desire to assess the Options Regulatory Fee to such Market Makers and Order Flow Providers until they are fully certified to transact business on the Exchange. The proposed change will have no effect on the assessment of fees for current BOX Market Makers and Order Flow Providers that are fully certified to transact business on the Exchange and will have no effect on Participants that are only clearing transactions for other BOX Participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) [sic] of the Act,[6] in particular, in that it provides [sic] the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed changes provide that newly registered Market Makers and Order Flow Providers will be assessed the Options Regulatory Fee once fully certified and will not alter the assessment of the Options Regulatory Fee on current BOX Market Makers and Order Flow Providers that are fully certified to transact business on the Exchange and on Participants that are only clearing transactions for other BOX Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[7] and Rule 19b–4(f)(2)[8] thereunder, because it establishes or changes a due, fee, or

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

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

[8] 17 CFR 240.19b–4(f)(2).

other charge applicable only to a member.

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 the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2010–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2010–060 and should be submitted on or before September 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22289 Filed 9–7–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice: 7152]

Additional Designation of an Entity Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of North Korea's Second Academy of Natural Sciences, Second Economic Committee, and Munitions Industry Department Pursuant to Executive Order 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters", the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that three North Korean entities, the Second Academy of Natural Sciences (SANS), the Second Economic Committee (SEC), and the Munitions Industry Department (MID), have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Under Secretary of State for Arms Control and International Security of the entities identified in this notice pursuant to Executive Order 13382 is effective on August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background:

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, and person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

SECOND ACADEMY OF NATURAL SCIENCES, (a.k.a. 2nd Academy of Natural Sciences, a.k.a. Che 2 Chayon Kwahak-Won, a.k.a. Academy of Natural Sciences, a.k.a. Chayon Kwahak-Won, a.k.a. National Defense Academy, a.k.a.

[9] 17 CFR 200.30–3(a)(12).

Kukpang Kwahak-Won, a.k.a. Second Academy of Natural Sciences Research Institute, a.k.a. SANSRI), Pyongyang, North Korea;

SECOND ECONOMIC COMMITTEE, Kangdong, North Korea; and

MUNITIONS INDUSTRY DEPARTMENT, (a.k.a. Military Supplies Industry Department), Pyongyang, North Korea.

Dated: August 30, 2010.

Ellen O. Tauscher,

Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 2010–22342 Filed 9–7–10; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 7149; OMB 1405–0182]

60-Day Notice of Proposed Information Collection: DS–160, Online Application for Nonimmigrant Visa

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Online Application for Nonimmigrant Visa.
- *OMB Control Number:* 1405–0182.
- *Type of Request:* Revision.
- *Originating Office:* Bureau of Consular Affairs, Visa Services (CA/VO).
- *Form Number:* DS–160.
- *Respondents:* All nonimmigrant visa applicants.
- *Estimated Number of Respondents:* 6,500,000.
- *Estimated Number of Responses:* 6,500,000.
- *Average Hours per Response:* 75 minutes.
- *Total Estimated Burden:* 8,125,000 hours.
- *Frequency:* Once per visa application.
- *Obligation To Respond:* Required to Obtain Benefit.

DATES: The Department will accept comments from the public up to 60 days from September 8, 2010.

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

- *E-mail: VisaRegs@state.gov* (Subject line must read DS–160 Reauthorization).
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–160 Reauthorization, 2401 E Street, NW., Washington, DC 20520–30106.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Online Application for Nonimmigrant Visa (DS–160) will be used to collect biographical information from individuals seeking a nonimmigrant visa. The consular officer uses the information collected to determine the applicant's eligibility for a visa. This collection combines questions from current information collections DS–156 (Nonimmigrant Visa Application), DS–156E (Nonimmigrant Treaty Trader Investor Application), DS–156K (Nonimmigrant Fiancé Application), DS–157 (Nonimmigrant Supplemental Visa Application), and DS–158 (Contact Information and Work History Application).

Methodology

The DS–160 will be submitted electronically to the Department via the Internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing. Applicants who submit the electronic application will no longer submit paper-based applications to the Department.

Dated: August 25, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–22360 Filed 9–7–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7150]

60-Day Notice of Proposed Information Collection: DS–7656; Affidavit of Relationship (AOR); OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Affidavit of Relationship (AOR)
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Office of Admissions, Bureau of Population, Refugees and Migration (PRM/A)
- *Form Number:* DS–7656.
- *Respondents:* Persons admitted to the United States as refugees or granted asylum in the United States who are claiming a relationship with family members overseas (spouses, unmarried children under age 21, and/or parents) in order to assist the U.S. Government in determining whether those family members are qualified to apply for admission to the United States via the U.S. Refugee Admissions Program under the family reunification access priority.
- *Estimated Number of Respondents:* 3,500 annually.
- *Estimated Number of Responses:* 3,500.
- *Average Hours per Response:* 45 minutes.
- *Total Estimated Burden:* 2,625 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to 60 days from September 9, 2010.

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

- *E-mail: SpruellDA@state.gov* (Subject line must read: DS–7656 AOR).
- *Mail (paper, disk, or CD–ROM submissions):* Delicia Spruell, PRM/A,

U.S. Department of State, SA–9, 8th floor, 2201 C Street, NW., Washington, DC 20522–0908. You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Delicia Spruell, PRM/A, U.S. Department of State, SA–9, 8th floor, 2201 C Street, NW., Washington, DC 20522–0908, at *SpruellDA@state.gov* or at 202–453–9257.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Affidavit of Relationship (AOR) will be required by the Department of State to establish qualifications for access to the Priority 3 Family Reunification category of the United States Refugee Admissions Program (USRAP) by persons of certain nationalities who are family members of qualifying "anchors" (persons already admitted to the U.S. as refugees or who were granted asylum in the U.S., including persons who may now be lawful permanent residents or U.S. citizens). Qualifying family members of U.S.-based anchors include spouses, unmarried children under age 21, and parents. Eligible nationalities are determined on an annual basis following careful review of several factors, including the United Nations High Commissioner for Refugees' annual assessment of refugees in need of resettlement, prospective or ongoing repatriation efforts, and U.S. foreign policy interests. The Priority 3 category, along with the other categories of cases that have access to USRAP, is outlined in the annual Proposed Refugee Admissions—Report to Congress, which is submitted on behalf of the President in fulfillment of the requirements of Section 207(e)(1)–(7) of the Immigration and Nationality Act, and authorized by the annual Presidential Determination for Refugee Admissions. The Priority 3—Family Reunification category has been suspended since 2008 while PRM and the Department of Homeland Security's U.S. Citizenship and Immigration Services (DHS/USCIS) have examined how additional procedures may be incorporated into P–3 processing to address indications of a high incidence of fraud in the program. PRM and DHS/USCIS are now preparing to resume the program. Having an Affidavit of Relationship filed on a potential applicant's behalf by an eligible anchor relative will be one of the criteria for access to this program. The AOR also informs the anchor relative that DNA evidence of all claimed parent-child relationships between the anchor relative and parents and/or unmarried children under 21 will be required as a condition of access to P–3 processing and that the costs will be borne by the anchor relative or their family members who may apply for access to refugee processing, or their derivative beneficiaries, as the case may be. Successful applicants may be eligible for reimbursement of DNA test costs.

Methodology: Information for the Affidavit of Relationship (AOR) will be collected in person by resettlement agencies around the United States, which are organizations that work under cooperative agreements with the Department of State. Filing an AOR will provide a means for individuals who were admitted to the United States as refugees or who were granted asylum to claim a relationship with certain family members that would qualify them to apply for access to refugee processing under the Priority 3 category of the U.S. Refugee Admissions Program. In order to file an AOR, an individual will have to be at least 18 years of age and have been admitted to the United States as a refugee or granted asylum in the United States no more than five years prior to the filing of this AOR.

The resettlement agencies will then forward the completed AORs to the Department of State's Refugee Processing Center (RPC) for data entry and case processing. DHS/USCIS will conduct an initial review of the AOR, including a check against information on record from previous filings by the anchor relative. Those AORs that are cleared for onward processing are forwarded to the appropriate Department of State-funded Overseas Processing Entity (OPE) to conduct preliminary "prescreening" interviews of the claimed family members. After the preliminary interviews, the OPE will provide the anchor relative with instructions on procedures for arranging DNA testing of claimed biological parent-child relationships through a laboratory approved by the American Association of Blood Banks (AABB) to conduct DNA relationship testing. DNA samples from the claimed biological parents and/or children of the anchor relative will be collected by designated panel physicians overseas and returned to the AABB-approved lab selected by the anchor relative. The Department of State will not retain the DNA samples. Redacted results received from the lab, which will indicate only whether each tested relationship was confirmed or not confirmed will be retained. The Privacy Impact Assessment for this collection will be posted on the Department of State website.

Dated: July 7, 2010.

David M. Robinson,

Principal Deputy Assistant Secretary, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. 2010–22354 Filed 9–7–10; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice: 7154]

Culturally Significant Objects Imported for Exhibition Determinations: "The Vorticists: Rebel Artists in London and New York, 1914–18"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "The Vorticists: Rebel Artists in London and New York, 1914–18," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Nasher Museum of Art at Duke University, Durham, NC, from on or about September 30, 2010, until on or about January 2, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 1, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–22362 Filed 9–7–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7155]

Culturally Significant Objects Imported for Exhibition Determinations: "Van Gogh, Gauguin, Cézanne, and Beyond: Post-Impressionist Masterpieces From the Musée d'Orsay"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Van Gogh, Gauguin, Cézanne, and Beyond: Post-Impressionist Masterpieces from the Musée d'Orsay," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about September 25, 2010, until on or about January 18, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 1, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–22359 Filed 9–7–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7157]

Culturally Significant Objects Imported for Exhibition Determinations: "Miró: The Dutch Interiors"

ACTION: Notice, correction.

SUMMARY: On August 11, 2010, notice was published on page 48736 of the **Federal Register** (volume 75, number 154) of determination made by the Department of State pertaining to the exhibit "Miró: The Dutch Interiors." The reference notice is corrected to accommodate an additional object to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the additional object to be included in the exhibition "Miró: The Dutch Interiors," imported from abroad for temporary exhibition within the United States, is of cultural significance. The additional object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the additional exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about October 4, 2010, until on or about January 17, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 1, 2010.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–22358 Filed 9–7–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7151]

Notice of Debarment Pursuant to Section 127.7(c) of the International Traffic in Arms Regulations

Title: Bureau of Political-Military Affairs; Statutory Debarment under the Arms Export Control Act and the International Traffic in Arms Regulations.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR parts 120 to 130) on persons convicted of violating or attempting to violate Section 38 of the Arms Export Control Act, as amended ("AECA"), (22 U.S.C. 2778).

DATES: *Effective Date:* Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: Lisa Studtmann, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2980.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. The statute permits limited exceptions to be made on a case-by-case basis. In implementing this provision, Section 127.7 of the ITAR provides for "statutory debarment" of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred as of the date of their AECA conviction (Name, Date of Conviction, District, Case No., Date of Birth):

(1) Arick Andre Dube, April 1, 2010, U.S. District Court, Southern District of Alabama, Case # 1:09–CR–00187–001, June 10, 1981.

(2) Juan Lopez-Hernandez, April 6, 2010, U.S. District Court, Southern District of Alabama, Case # 1:09–CR–00187–002, March 16, 1968.

(3) Charles Michael Cartwright, April 18, 2010, U.S. District Court, District of Arizona, Case # CR–08–01197–002, October 13, 1988.

(4) Kasey Ray Davis, April 18, 2010, U.S. District Court, District of Arizona, Case # CR–08–01197–010, December 9, 1989.

(5) Adam Wyatt Fuentes, April 18, 2010, U.S. District Court, District of Arizona, Case # CR–08–01197–003, November 23, 1983.

(6) Andrew Allen Wild, April 18, 2010, U.S. District Court, District of Arizona, Case # CR–08–01197–013, June 28, 1986.

(7) Ian Alexander Witte, April 18, 2010, U.S. District Court, District of Arizona, Case # CR–08–01197–011, November 1, 1990.

(8) Rocky Mountain Instrument Company, August 20, 2010, U.S. District Court, District of Colorado, Case # 1:10–CR–00139.

(9) Amir Hossein Ardebili (aka Amir Ahkami, Alex Dave, Arash Koren), December 14, 2009, U.S. District Court, District of Delaware, Case #s 1:07–CR–155–01 and 1:08–CR–73–01, July 3, 1974.

(10) Baktash Fattahi, July 20, 2010, U.S. District Court, Southern District of Florida, Case # 1:09–20298–CR–SEITZ(s)-3, June 26, 1972.

(11) Desmond Dinesh Frank, August 28, 2008, U.S. District Court, District of Massachusetts, Case # 1:07–CR–10382, December 28, 1977.

(12) Yen Ching Peng (aka Alex Peng, Yen-Yo Peng), U.S. District Court, Southern District of New York, Case # 1:07–cr–01214–01, March 15, 1976.

(13) Atmospheric Glow Technologies, Inc., February 18, 2010, U.S. District Court, Eastern District of Tennessee, Case # 3:08–CR–69–002.

(14) Roberto Aaron Velasco-Tamez, March 3, 2009, U.S. District Court, Southern District of Texas, Case # 7:08–CR–00892–001, March 29, 1988.

(15) Raul Calvillo-Colunga, February 15, 2010, U.S. District Court, Southern District of Texas, Case # 7:08–CR–01415–002, February 18, 1990.

(16) Erick Gerardo Martinez-Martinez, February 16, 2010, U.S. District Court, Southern District of Texas, Case # 7:09–CR–00713–001, November 20, 1988.

(17) Aaron De Leon, February 16, 2010, U.S. District Court, Southern District of Texas, Case # 7:09–CR–01089–001, November 21, 1988.

(18) Rodolfo Palacios, Jr., February 10, 2010, U.S. District Court, Southern District of Texas, Case # 7:09–CR–01249–001, July 25, 1991.

(19) Armando Bazan, May 1, 2010, U.S. District Court, Southern District of Texas, Case # 7:09–CR–01316–001, October 4, 1963.

(20) Cesar Canales, May 1, 2010, U.S. District Court, Southern District of Texas, Case # 7:09–CR–01316–002, December 14, 1958.

(21) Francisco Reyes-Martinez, March 30, 2010, U.S. District Court, Southern District of Texas, Case # 1:09–CR–01434–001, February 5, 1971.

(22) Pablo Leyva-Angiano, July 19, 2010, U.S. District Court, Southern District of Texas, Case # 7:10–CR–00179–001, March 7, 1983.

(23) Ramon Andrade, Jr., July 14, 2010, U.S. District Court, Southern District of Texas, Case # 7:10–CR–00346–001, July 24, 1970.

(24) Caro-Dominguez, Jaime Omar, June 23, 2010, U.S. District Court, Western District of Texas, Case # 4:10–cr–004–01, August 30, 1998.

As noted above, at the end of the three-year period following the date of conviction, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (*see e.g.,* sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit there from or have a direct or indirect interest therein.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: August 31, 2010.

Thomas M. Countryman,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2010–22357 Filed 9–7–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability of a Supplemental Draft Environmental Impact Statement for the DesertXpress High-Speed Passenger Rail Project

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA is issuing this notice to advise the public that a Supplemental Draft EIS has been prepared for the DesertXpress High-Speed Passenger Train Project (Project). FRA is the lead agency for the environmental review process and has prepared the Supplemental Draft EIS consistent with the provisions of Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Counsel of Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 *et seq.*) and FRA's Procedures for Considering Environmental Impacts (64 FR 28545; May 26, 1999).

DesertXpress Enterprises Inc., the Project proponent, proposes to construct and operate a fully grade-separated, dedicated double-track, passenger-only railroad along an approximately 200-mile corridor, from Victorville, CA, to Las Vegas, NV. After publication of the Draft EIS and in response to substantive comments submitted by interested agencies and the public, the Project proponent proposed several project modifications and additions. After reviewing the proposed project modifications and additions, FRA determined a Supplemental Draft EIS describing the potential environmental effects of the modifications and additions was necessary to fulfill its responsibility under NEPA.

DATES: Written comments on the Supplemental Draft EIS for the DesertXpress Project should be provided to FRA on or before October 18 2010. Public hearings are scheduled on October 13 and October 14, 2010, at the times and dates listed in the Addresses Section below in Las Vegas, NV and Barstow, CA.

ADDRESSES: Written comments on the Supplemental Draft EIS should be sent to Ms. Wendy Messenger, Environmental Protection Specialist, Office of Railroad Policy and Development, ATTN: DesertXpress EIS, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 or via e-mail with the subject line DesertXpress EIS to *Wendy.Messenger@dot.gov.* Comments may also be provided orally or in writing at the public hearings scheduled at the following locations:

- Las Vegas, NV, Wednesday, October 13, 2010, 5:30 to 8 p. m., Hampton Inn Tropicana, SW. Event Center B, 4975 Dean Martin Drive, Las Vegas, NV; and
- Barstow, CA, Thursday, October 14, 2010, 5:30 to 8 p.m., Lenwood Hampton Inn, Jackrabbit Room 1, 2710 Lenwood Road, Barstow, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Messenger, Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 (telephone: 202–493–6396).

SUPPLEMENTARY INFORMATION: Following the March 18, 2009 publication of the Draft EIS on the Project, several project modifications and additions were proposed to address substantive comments received during public and agency review of the Draft EIS and to reduce or avoid significant environmental effects. After evaluating the proposed project modifications and additions, FRA determined, pursuant to 40 CFR 1502.9, that it was necessary to prepare a supplement to the Draft EIS analyzing the potential environmental impacts that might result from those modifications and additions. Therefore, in compliance with CEQ's regulations and FRA's Procedures for Considering Environmental Impacts, FRA, in cooperation with the Bureau of Land Management (BLM), Surface Transportation Board (STB), Federal Highway Administration (FHWA), and the National Park Service (NPS), and with the added participation of the California Department of Transportation (Caltrans) and the Nevada Department of Transportation (NDOT), prepared a Supplemental Draft EIS.

The Project would involve the construction and operation of an interstate high-speed passenger train system between Victorville, CA and Las Vegas, NV, along an approximately 200-mile corridor. The project proponent proposes to construct nearly the entire fully grade-separated, dedicated double-track, passenger-only railroad either in the median of, or immediately alongside, Interstate-15 (I–15).

The proposed project modifications and additions do not in any way change the underlying purpose of, or need for, the project. The need for high-speed passenger rail service arises from several factors, including high and increasing travel demand with limited increases in capacity on I–15, constraints to the expansion of air travel, and frequent highway vehicle accidents on the I–15 corridor. The DesertXpress high-speed passenger train is intended to provide reliable and safe passenger rail transportation using proven high-speed rail technology that would be a convenient alternative to automobile travel on I–15 or air travel to and from Las Vegas, and that would add transportation capacity along the I–15 corridor.

Consistent with the requirements of NEPA, the Supplemental Draft EIS evaluates the environmental effects of the proposed modifications and additions, which include a new Victorville passenger station option at Dale Evans Parkway, a rail alignment through the Barstow area following the I–15 freeway corridor from Lenwood through Yermo, CA, a new rail alignment through the Clark Mountains near the Mojave National Preserve, new sites for maintenance and operation facilities in unincorporated Clark County, NV, relocation of portions of the rail alignment in metropolitan Las Vegas from the immediate I–15 corridor to the Industrial Road/Dean Martin Drive corridor, and several alignment modifications to reduce or avoid environmental impacts, improve operating characteristics, or avoid conflicts with other planned projects.

Copies of both the Supplemental Draft EIS and Draft EIS are available online at FRA's Web site: *http://www.fra.dot.gov*; they are also available for viewing at the following locations near the planned rail system:

- Victorville City Library, 15011 Circle Drive, Victorville, CA 92395;
- Barstow Library, 304 East Buena Vista, Barstow, CA 92311;
- Clark County Library, 1401 E. Flamingo Road, Las Vegas, NV 89119; and
- Las Vegas Library, 833 Las Vegas Blvd. N., Las Vegas, NV 80101.

Issued in Washington, DC, on September 1, 2010.

Mark E. Yachmetz,

Associate Administrator for Railroad Policy & Development.

[FR Doc. 2010–22246 Filed 9–7–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Friday, October 8, 2010, from 9 a.m. to 5 p.m. EST in the Oklahoma City Room at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC.

Section 5601(o) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department.

The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Overview of prior meeting; (3) Discussion of DOT Strategic Plan and related BTS products; (4) Council Members review and discussion of statistical programs; and (5) future Council activities. Participation is open to the public. Members of the public who wish to participate must notify Tonya Tinsley-Grisham at *tonya.tinsley@dot.gov,* not later than September 27, 2010. Members of the public may present oral statements at the meeting with the approval of Steven K. Smith, Deputy Director of the Bureau of Transportation Statistics. Non-committee members wishing to present oral statements or obtain information should contact Ms. Tinsley-Grisham via e-mail no later than October 4, 2010.

Questions about the agenda or written comments may be e-mailed or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, Attention: Tonya Tinsley-Grisham, 1200 New Jersey Avenue, SE., Room # E34–403, Washington, DC 20590, *tonya.tinsley@dot.gov* or faxed to (202) 366–3640. BTS requests that written comments be received by October 5, 2010.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 1st day of September 2010.

Steven K. Smith,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2010–22319 Filed 9–7–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Brownsville South Padre Island International Airport, Brownsville, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Brownsville, Texas for Brownsville South Padre Island International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Lance E. Key, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137, (817) 222–5681.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Brownsville South Padre Island International Airport are in compliance with applicable requirements of part 150, effective August 30, 2010. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the City of Brownsville, Texas. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of part 150 includes: Tables 5.1 through 5.13 and Figures 5.1 through 5.5 for year 2009 existing conditions and Tables 6.1 through 6.10 and Figures 6.1 through 6.5 for year 2015 future conditions at Brownsville South Padre Island International Airport. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on August 30, 2010.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section

47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, and with Mr. Larry A. Brown, Director of Aviation, 700 South Minnesota Avenue, Brownsville, Texas 78521–5721. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, August 30, 2010.

D. Cameron Bryan,

Acting Manager, Airports Division.

[FR Doc. 2010–22240 Filed 9–7–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury 's Office of Foreign Assets Control ("OFAC") is publishing the names of eight individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on September 1, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On September 1, 2010 the Director of OFAC removed from the SDN List the eight individuals listed below, whose property and interests in property were blocked pursuant to the Order:

1. MONDRAGON AVILA, Alicia, c/o ALERO S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; c/o INVERSIETE S.A., Cali, Colombia; c/o INVERSIONES Y DISTRIBUCIONES A M M LTDA., Cali, Colombia; DOB 26 Oct 1936; Cedula No. 29086016 (Colombia) (individual) [SDNT]
2. MUNOZ CORTES, Julio Cesar (a.k.a. MUNOZ CORTEZ, Julio Cesar), c/o COPSERVIR LTDA., Bogota, Colombia; c/o DROGAS LA REBAJA BARRANQUILLA S.A., Barranquilla, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o DROGAS LA REBAJA PRINCIPAL S.A., Bogota, Colombia; c/o DROGAS LA REBAJA CALI S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; DOB 26 Feb 1947; Cedula No. 14938700 (Colombia) (individual) [SDNT]
3. PENALOSA CAMARGO, Diego Hernando, c/o FUNDACION VIVIR MEJOR, Cali, Colombia; Cedula No. 118391 (Colombia); Passport 118391 (Colombia) (individual) [SDNT]
4. RESTREPO CANO, Maria Del Pilar, c/o CHAMARTIN S.A., Cali, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA SANAR DE COLOMBIA S.A., Cali, Colombia; DOB 26 Jun 1965; Cedula No. 31948671 (Colombia); Passport 31948671 (Colombia) (individual) [SDNT]
5. RESTREPO HERNANDEZ, Ruben Dario, c/o DISMERCOOP, Cali, Colombia; c/o LATINFAMRACOS, S.A., Quito, Ecuador; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; DOB 28 Sep 1958; Cedula No. 10094108 (Colombia); Passport 10094108 (Colombia); RUC # 1791818652001 (Ecuador) (individual) [SDNT]
6. RODRIGUEZ RAMIREZ, Claudia Pilar, c/o ALERO S.A., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali,

Colombia; c/o CLAUDIA PILAR RODRIGUEZ Y CIA. S.C.S., Bogota, Colombia; c/o D'CACHE S.A., Cali, Colombia; c/o CREDIREBAJA S.A., Cali, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o DEFAFARMA S.A., Bogota, Colombia; c/o DIRECCION COMERCIAL Y MARKETING CONSULTORIA EMPRESA UNIPERSONAL, Bogota, Colombia; c/o DROCARD S.A., Bogota, Colombia; c/o INVERSIONES CLAUPI S.L., Madrid, Colombia; DOB 30 Jun 1963; alt.DOB 30 Aug 1963; alt. DOB 1966; Cedula No. 51741013 (Colombia); Passport 007281 (Colombia); alt. Passport P0555266 (Colombia); alt. Passport 51741013 (Colombia) (individual) [SDNT]

7. TRIVINO RODRIGUEZ, Elsa Yaneth, c/o INTERCONTINENTAL DE AVIACION S.A., Bogota, Colombia; c/o AEROCOMERCIAL ALAS DE COLOMBIA LTDA., Bogota, Colombia; c/o ASOCIACION TURISTICA INTERNACIONAL S.C.S., Bogota, Colombia; c/o INTERCONTINENTAL DE FINANCIACION AEREA S.A., Bogota, Colombia; c/o CIA CONSTRUCTORA Y COMERCIALIZADORA DEL SUR LTDA., Bogota, Colombia; c/o GREEN ISLAND S.A., Bogota, Colombia; Cedula No. 20484603 (Colombia) (individual) [SDNT]

8. VARGAS DUQUE, Adriana, c/o COMERCIALIZADORA INTERTEL S.A., Cali, Colombia; c/o DISTRIBUIDORA SANAR DE COLOMBIA S.A., Cali, Colombia; c/o PROSALUD Y BIENESTAR S.A., Cali, Colombia; c/o PROSPECTIVA E.U., Cali, Colombia; DOB 20 May 1974; Cedula No. 66902221 (Colombia); Passport 66902221 (Colombia) (individual) [SDNT]

Dated: September 1, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–22236 Filed 9–7–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Thirteen Specially Designated Nationals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the names of ten entities and three individuals from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.*

DATES: The removal of ten entities and three individuals from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of Wednesday, September 1, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

On April 19, 2002, one additional person and, on August 28, 2002, twelve additional entities were designated by the Secretary of the Treasury. The Department of the Treasury's Office of Foreign Assets Control has determined that these ten entities and three individuals no longer meet the criteria for designation under the Order and are appropriate for removal from the list of Specially Designated Nationals and Blocked Persons.

The following designations are removed from the list of Specially Designated Nationals and Blocked Persons:

AL–BARAKAAT WIRING SERVICE, 2940 Pillsbury Avenue, Suite 4, Minneapolis, MN 55408 [SDGT].

AL–NUR HONEY PRESS SHOPS (a.k.a. AL–NUR HONEY CENTER), Sanaa, Yemen [SDGT].

AL–KADR, Ahmad Sa'id (a.k.a. AL–KANADI, Abu Abd Al-Rahman); DOB 01 Mar 1948; POB Cairo, Egypt (individual) [SDGT].

AL–SHIFA' HONEY PRESS FOR INDUSTRY AND COMMERCE, P.O. Box 8089, Al-Hasabah, Sanaa, Yemen; By the Shrine Next to the Gas Station, Jamal Street, Ta'iz, Yemen; Al-'Arudh Square, Khur Maksar, Aden, Yemen; Al-Nasr Street, Doha, Qatar [SDGT].

AWEYS, Dahir Ubeidullahi, Via Cipriano Facchinetti 84, Rome, Italy (individual) [SDGT].

BARAKAAT BOSTON, 266 Neponset Ave., Apt. 43, Dorchester, MA 02122–3224 [SDGT].

BARAKAAT CONSTRUCTION COMPANY, P.O. Box 3313, Dubai, United Arab Emirates [SDGT].

BARAKAAT INTERNATIONAL, INC., 1929 South 5th Street, Suite 205, Minneapolis, MN [SDGT].

BARAKAT WIRE TRANSFER COMPANY, 4419 S. Brandon St., Seattle, WA [SDGT].

EL MAHFOUDI, Mohamed, via Puglia, n. 22, Gallarate, Varese, Italy; DOB 24 Sep 1964; POB Agadir, Morocco; Italian Fiscal Code LMHMMD64P24Z330F; Residence, Agadir, Morocco (individual) [SDGT].

PARKA TRADING COMPANY, P.O. Box 3313, Deira, Dubai, United Arab Emirates [SDGT].

SOMALI INTERNATIONAL RELIEF ORGANIZATION, 1806 Riverside Ave., 2nd Floor, Minneapolis, MN [SDGT].

SOMALI NETWORK AB (a.k.a. SOM NET AB), Hallbybacken 15, Spanga 70, Sweden [SDGT].

The removal of these ten entities and three individuals' names from the list of Specially Designated Nationals and Blocked Persons is effective as of Wednesday, September 1, 2010. All property and interests in property of the three individuals that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: September 1, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–22235 Filed 9–7–10; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding technical and conforming amendments to Federal sentencing guidelines effective November 1, 2010.

SUMMARY: On April 29, 2010, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2010, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**. 75 FR 27388 (May 14, 2010). The Commission has made technical and conforming amendments, set forth in this notice, to commentary provisions related to those amendments.

DATES: The Commission has specified an effective date of November 1, 2010, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). *See* 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary. This notice sets forth technical and conforming amendments to commentary that will become effective on November 1, 2010.

Authority: USSC Rules of Practice and Procedure 4.1.

William K. Sessions III,

Chair.

Technical and Conforming Amendments

1. Amendment: The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by inserting "or Paleontological Resources" after "Resources" both places it appears.

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 3 in the last paragraph by inserting "*or Paleontological Resources*" after "*Resources*"*;* by inserting "or paleontological resource" before ", loss"; by striking "cultural heritage" after "to that" and by striking "cultural heritage" after "of the".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 9 by striking "; § 4A1.2, comment. (n.3)".

The Commentary to § 2P1.1 captioned "Application Notes" is amended in Note 5 by striking the comma after "escape)" and inserting "and"; and by striking ", and § 4A1.1(e) (recency)".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 3 by striking "§ 2B3.1(a)" and inserting "§ 2B3.1(b)(1)".

The Commentary to § 3C1.1 captioned "Application Notes", as amended by Amendment 9, submitted to Congress on April 29, 2010, is amended in Note 4(F) by inserting "judge" after "magistrate"; and in Note 5(B) by striking "4(g)" and inserting "4(G)".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 9 by striking "his" and inserting "the defendant's"; and by striking "he" and inserting "the defendant".

The Commentary to § 3C1.2 captioned "Application Notes" is amended in Note 5 by striking "his" and inserting "the defendant's" and by striking "he" and inserting "the defendant".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 3 by striking "1(a)" and inserting "1(A)".

The Commentary to § 4B1.3 captioned "Application Notes" is amended in Note 2 by striking "(1)" and inserting "(A)"; by striking "(2)" and inserting "(B)"; and by striking "his" and inserting "the defendant's".

The Commentary to § 4B1.3 captioned "Background" is amended by striking "he" and inserting "the defendant"; and by striking "his" and inserting "the defendant's".

The Commentary to § 5B1.1 captioned "Application Notes", as amended by Amendment 1, submitted to Congress on April 29, 2010, is amended in Note 1 by redesignating subdivisions (a) and (b) as (A) and (B).

The Commentary to § 5D1.1 captioned "Application Notes" is amended in Note 1 by redesignating subdivisions (1) through (5) as (A) through (E).

The Commentary to § 5E1.5 captioned "Background" is amended by striking "1302c–9" and inserting "1320c–9".

The Commentary to § 5G1.2 captioned "Application Notes" is amended in Note 1 in the second paragraph by striking "(1)" and inserting "(A)" and by striking "(2)" and inserting "(B)".

The Commentary to § 5G1.3 captioned "Application Notes" is amended in Note 2(C) by striking "Judgement" and inserting "Judgment".

The Commentary to § 7B1.4 captioned "Application Notes" is amended in Note 2 by striking "Adequacy" and inserting "Departures Based on Inadequacy"; and in Note 3 by striking "he" and inserting "the defendant".

The Commentary to § 8A1.2 captioned "Application Notes" is amended in Note 2 by striking "and" after "Procedures" and inserting a comma; by inserting ", and Crime Victims' Rights" after "Agreements"; and in Note 3 by redesignating subdivisions (a) through (j) as subdivisions (A) through (J).

Reason for Amendment: This amendment makes certain technical and conforming changes to commentary in the *Guidelines Manual.*

First, the amendment makes certain technical and conforming changes in connection with the amendments that the Commission submitted to Congress on April 29, 2010. *See* 75 FR 27388 (May 14, 2010). Those conforming changes are as follows:

(1) Amendment 8 expanded the scope of § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources) to cover not only cultural heritage resources, but also paleontological resources. To reflect this expanded scope, conforming changes are made to § 2B1.1 (Theft, Property Destruction, and Fraud), Application Notes 1 and 3.

(2) Amendment 9 made a technical change to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition), Application Note 10, to correct an inaccurate

citation. To address a parallel inaccurate citation in § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), Application Note 9, a parallel technical change is made there.

(3) Amendment 5 eliminated the use of "recency" points in calculating the criminal history score. A conforming change is made in § 2P1.1 (Escape, Instigating or Assisting Escape), Application Note 5, to delete an obsolete reference to "recency."

Second, the amendment makes certain other stylistic and clerical changes to commentary in the *Guidelines Manual.* It amends § 3A1.2 (Official Victim), Application Note 3, to provide an accurate reference to an enhancement in the robbery guideline. It amends § 3C1.1 (Obstructing or Impeding the Administration of Justice), Application Note 4, to replace the obsolete term "magistrate" with the term "magistrate judge." It amends § 5E1.5 (Costs of Prosecution), Background, to correct a typographical error in a statutory citation. It amends § 7B1.4 (Term of Imprisonment), Application Note 2, and § 8A1.2 (Application Instructions—Organizations), Application Note 2, to provide accurate references to guideline titles. Finally, it makes certain other stylistic changes to promote stylistic consistency and gender neutrality.

[FR Doc. 2010–22356 Filed 9–7–10; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In July 2010, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2011. See 75 FR 41927–41929 (July 19, 2010). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2011. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2011. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2011.

As so prefaced, the Commission has identified the following priorities:

(1) Implementation of the Fair Sentencing Act of 2010, Public Law 111–220, regarding offenses involving cocaine base ("crack" cocaine) and offenses involving drug trafficking, including promulgation of a temporary, emergency amendment under section 8 of that Act and promulgation of a permanent amendment implementing that Act, including possible consideration of amending any related adjustments; and possible consideration of amending the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types.

(2) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which *United States* v. *Booker,* 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected Federal sentencing practices, the appellate review of those practices, and the role of the Federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings, possibly including (A) an evaluation of the impact of those decisions on the Federal sentencing guideline system; (B) development of recommendations for legislation regarding Federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-*Booker* Federal sentencing decisions; and (D) possible consideration of amendments to the Federal sentencing guidelines. Such findings will be informed by the testimony received at seven regional public hearings the Commission held in 2009–2010, feedback received from the judiciary contained in the *Results of Survey of United States District Judges January 2010 through March 2010* issued in June 2010, and other information and input.

(3) Continuation of its study of and, pursuant to the directive in section 4713 of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, Public Law 111–84, report to Congress on statutory mandatory minimum penalties, including a review of the operation of the "safety valve" provision at 18 U.S.C. 3553(e). The findings of the report will be informed by the testimony received at the hearing on statutory mandatory minimum penalties the Commission held on May 27, 2010, the regional public hearings and survey of United States District Judges referred to in paragraph (2), and other information and input.

(4) Study of and, pursuant to the directive in section 107(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111–195, report to Congress regarding violations of section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(a)), sections 38, 39, and 40 of the Arms Export Control Act (22 U.S.C. 2778, 2779, and 2780), and the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*), including consideration of amendments to § 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License) or other guidelines in Part K or Part M of Chapter Two of the *Guidelines Manual* that might be appropriate in light of the information obtained from such study.

(5) Implementation of the directive in section 10606(a)(2)(A) of the Patient Protection and Affordable Care Act, Public Law 111–148, regarding health care fraud offenses; the directives in section 1079A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, regarding securities fraud offenses and financial institution fraud offenses; and any other crime legislation enacted during the 111th Congress warranting a Commission response.

(6) Continuation of its review of child pornography offenses and possible report to Congress as a result of such review. It is anticipated that any such report would include (A) a review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies

on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory changes that may be appropriate.

(7) Continuation of its review of departures within the guidelines, including provisions in Parts H and K of Chapter Five of the *Guidelines Manual,* and the extent to which pertinent statutory provisions prohibit, discourage, or encourage certain factors as forming the basis for departure from the guideline sentence.

(8) Continuation of its multi-year study of the statutory and guideline definitions of "crime of violence", "aggravated felony", "violent felony", and "drug trafficking offense", including (A) an examination of relevant circuit conflicts regarding whether any offense is categorically a "crime of violence", "aggravated felony", "violent felony", or "drug trafficking offense" for purposes of triggering an enhanced sentence under certain Federal statutes and guidelines; (B) possible consideration of an amendment to provide an alternative approach to the "categorical approach", *see Taylor* v. *United States,* 495 U.S. 575 (1990); *Shepard* v. *United States,* 544 U.S. 13 (2005), for determining the applicability of guideline enhancements; and (C) possible consideration of an amendment to provide that the time period limitations in subsection (e) of § 4A1.2 (Definitions and Instructions for Computing Criminal History) apply for purposes of determining the applicability of enhancements in § 2L1.2 (Unlawfully Entering or Remaining in the United States).

(9) Consideration of a possible amendment to provide a reduction in the offense level for certain deportable aliens who agree to a stipulated order of deportation.

(10) Examination of, and possible amendments to, the guidelines and policy statements in Part D of Chapter Five of the *Guidelines Manual* pertaining to supervised release.

(11) Continued study of alternatives to incarceration, including possible consideration of any changes to the *Guidelines Manual* that might be appropriate in light of the information obtained from that study.

(12) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the Federal courts.

(13) Multi-year review of the guidelines pertaining to environmental crimes, with particular consideration of whether the fine provisions in Part C of Chapter Eight of the *Guidelines Manual* should apply to such offenses.

(14) Consideration of miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

William K. Sessions III,

Chair.

[FR Doc. 2010–22340 Filed 9–7–10; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendment; request for comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, and section 8 of the Fair Sentencing Act of 2010, Public Law 111–220, the Commission is considering promulgating a temporary, emergency amendment to the sentencing guidelines, policy statements, and commentary to decrease penalties for offenses involving cocaine base ("crack" cocaine) and to account for certain aggravating and mitigating circumstances in drug trafficking cases. This notice sets forth the proposed amendment and, for each part of the proposed amendment, a synopsis of the issues addressed by that part. This notice also provides multiple issues for comment, some of which are contained within the proposed amendment.

The specific proposed amendment (and issues for comment) in this notice is as follows: A proposed temporary, emergency amendment and issues for comment regarding offenses involving crack cocaine (particularly offenses covered by §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); (Attempt or Conspiracy) and 2D2.1 (Unlawful Possession; Attempt or Conspiracy)) and to account for certain aggravating and mitigating circumstances in drug trafficking cases (particularly cases under § 2D1.1) to implement section 8 of the Fair Sentencing Act of 2010, Public Law 111–220.

DATES: Written public comment on the proposed emergency amendment should be received by the Commission not later than October 8, 2010, in anticipation of a vote to promulgate the emergency amendment by November 1, 2010.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendment and issues for comment.

The parts of the proposed amendment in this notice are presented in one of two formats. First, some parts of the proposed amendment are proposed as specific revisions to a guideline or commentary. Bracketed text within a part of the proposed amendment indicates a heightened interest on the Commission=s part on comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

Additional information pertaining to the proposed amendment described in this notice may be accessed through the Commission's Web site at *http://www.ussc.gov*.

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 8 of the Fair Sentencing Act of 2010,

Pub. L. 111–220; USSC Rules of Practice and Procedure, Rules 4.4, 4.5.

William K. Sessions, III,
Chair.

1. Proposed Emergency Amendment: Fair Sentencing Act of 2010

Synopsis of Proposed Amendment: The Fair Sentencing Act of 2010, Public Law 111–220 (the "Act"), was signed into law on August 3, 2010. The Act reduces statutory penalties for cocaine base (crack cocaine) offenses and eliminates the mandatory minimum sentence for simple possession of crack cocaine. The Act also contains directives to the Commission to review and amend the sentencing guidelines to account for certain aggravating and mitigating circumstances in drug trafficking cases.

Section 8 of the Act invokes the Commission's emergency, temporary amendment authority under section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) and directs the Commission to promulgate within 90 days—*i.e.,* not later than November 1, 2010—the amendments to the *Guidelines Manual* provided for by the Act. It provides in full as follows:

Sec. 8. Emergency Authority for United States Sentencing Commission

The United States Sentencing Commission shall—

(1) Promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 90 days after the date of enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired; and

(2) Pursuant to the emergency authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

Section 21(a) of the Sentencing Act of 1987 provides in full as follows:

Sec. 21. Emergency Guidelines Promulgation Authority

(a) In General.—In the case of—

(1) An invalidated sentencing guideline;

(2) The creation of a new offense or amendment of an existing offense; or

(3) Any other reason relating to the application of a previously established sentencing guideline, and determined by the United States Sentencing Commission to be urgent and compelling;

the Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of title 28 and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress under section 994(p) of title 28, United States Code.

Any temporary amendment promulgated by the Commission under the section 21(a) authority will expire not later than November 1, 2011. *See* section 21(a); 28 U.S.C. 994(p). The Commission will continue work on the issues raised by the Act during the regular amendment cycle ending May 1, 2011, with a view to re-promulgating any temporary amendment as a permanent amendment (in its original form, or with revisions) under 28 U.S.C. 994(p).

The proposed amendment and issues for comment address the issues arising under the Act in the following manner:

(A) Changes to Statutory Terms of Imprisonment for Crack Cocaine

Issue for Comment:

1. Federal drug laws establish three tiers of penalties for manufacturing and trafficking in cocaine, each based on the amount of cocaine involved. *See* 21 U.S.C. 841(b)(1)(A), (B), (C), 960(b)(1), (2), (3). For smaller quantities, the maximum term of imprisonment is 20 years, and there is no mandatory minimum term of imprisonment. If the amount of cocaine involved reaches a specified quantity, however, the maximum term increases to 40 years, and a mandatory minimum term of 5 years applies. If the amount of cocaine reaches ten times that specified quantity, the maximum term is life, and a mandatory minimum term of 10 years applies.

Section 2 of the Act amended these laws to raise the specified quantities of crack cocaine associated with these two higher tiers of penalties. Before the Act, the 5-year mandatory minimum applied to offenses involving 5 grams (or more) of crack cocaine, and the 10-year mandatory minimum applied to offenses involving 50 grams (or more) of crack cocaine. Section 2 of the Act raised these quantities to 28 grams and 280 grams, respectively.

The Commission requests comment on what temporary amendments to the *Guidelines Manual* it should promulgate in response to the statutory changes made by section 2 of the Act. In particular, the Commission requests comment on what amendments should be made to the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). When Congress has provided statutory mandatory minimum sentences based on drug quantity, the Commission has generally responded by incorporating the statutory mandatory minimum sentences into the Drug Quantity Table and extrapolating upward and downward to set guideline sentencing ranges for all drug quantities. The drug quantity thresholds in the Drug Quantity Table have generally been set so as to provide base offense levels corresponding to guideline ranges that are above the statutory mandatory minimum penalties.

Until 2007, the drug quantity thresholds for crack cocaine followed the same principle. Accordingly, offenses involving 5 grams or more of crack cocaine were assigned a base offense level (level 26) corresponding to a sentencing guideline range of 63 to 78 months for a defendant in Criminal History Category I (a guideline range that exceeds the 5-year statutory minimum for such offenses by at least three months). Similarly, offenses involving 50 grams or more of crack cocaine were assigned a base offense level (level 32) corresponding to a sentencing guideline range of 121 to 151 months for a defendant in Criminal History Category I (a guideline range that exceeds the 10-year statutory minimum for such offenses by at least 1 month). In Amendment 706, the Commission amended the Drug Quantity Table for crack cocaine, reducing the base offense levels for these quantities to level 24 and level 30, respectively, and extrapolating upward and downward for other crack cocaine quantities. *See* USSG App. C, Amendment 706 (effective November 1, 2007). Base offense levels 24 and 30 each correspond to a guideline range for a defendant in Criminal History Category I that includes the statutory mandatory minimum penalty.

For base offense level 24, the guideline range is 51–63 months; for base offense level 30, the guideline range is 97–121 months. The Commission also amended the commentary to § 2D1.1 to revise the manner in which combined offense levels are determined in cases involving both crack cocaine and one or more other controlled substances. *See* USSG

App. C, Amendment 715 (effective May 1, 2008).

Given the statutory changes made by section 2 of the Act, how should the Commission revise the Drug Quantity Table for offenses involving crack cocaine?

In particular, should the base offense levels for crack cocaine again be set so that the statutory minimum penalties correspond to levels 26 and 32, using the new drug quantities established by the Act (the "level 26 option")? Or should the base offense levels for crack cocaine continue to be set so that the statutory minimum penalties correspond to levels 24 and 30, using the new drug quantities established by the Act (the "level 24 option")? A comparison of the base offense levels ("BOL") and quantities for these options is as follows:

BOL	Quantity under level 26 option	Quantity under level 24 option
38	8.4 KG or more	25.2 KG or more.
36	At least 2.8 KG but less than 8.4 KG	At least 8.4 KG but less than 25.2 KG.
34	At least 840 G but less than 2.8 KG	At least 2.8 KG but less than 8.4 KG.
32	At least 280 G but less than 840 G	At least 840 G but less than 2.8 KG.
30	At least 196 G but less than 280 G	At least 280 G but less than 840 G.
28	At least 112 G but less than 196 G	At least 196 G but less than 280 G.
26	At least 28 G but less than 112 G	At least 112 G but less than 196 G.
24	At least 22.4 G but less than 28 G	At least 28 G but less than 112 G.
22	At least 16.8 G but less than 22.4 G	At least 22.4 G but less than 28 G.
20	At least 11.2 G but less than 16.8 G	At least 16.8 G but less than 22.4 G.
18	At least 5.6 G but less than 11.2 G	At least 11.2 G but less than 16.8 G.
16	At least 2.8 G but less than 5.6 G	At least 5.6 G but less than 11.2 G.
14	At least 1.4 G but less than 2.8 G	At least 2.8 G but less than 5.6 G.
12	Less than 1.4 G	Less than 2.8 G.

Whichever option is adopted, conforming changes to the commentary to § 2D1.1 will need to be made to revise the manner in which combined offense levels are determined in cases involving crack cocaine and one or more other controlled substances. Under either option, 1 gram of crack cocaine would be equivalent to 3,571 grams of marijuana. However, if the level 26 option is adopted, the combined offense level in such a case would be determined under Application Note 10 in the same manner as for any other case involving more than one controlled substance, *i.e.,* Application Note 10(D) would not apply. If the level 24 option is adopted, in contrast, Application Note 10(D) would continue to apply, except that Application Note 10(D)(ii)(I) would be amended to read "the offense involved 25.2 kg or more, or less than 1.4 g, of cocaine base; or", and the examples in Application Note 10(D)(iii) would be revised.

(B) Elimination of Mandatory Minimum for Simple Possession of Crack Cocaine

Synopsis of Proposed Amendment: This part of the proposed amendment responds to section 3 of the Act, which amended 21 U.S.C. 844(a) to eliminate the 5-year mandatory minimum term of imprisonment (and 20-year statutory maximum) for simple possession of more than 5 grams of crack cocaine (or, for certain repeat offenders, more than 1 gram of crack cocaine). Accordingly, the statutory penalty for simple possession of crack cocaine is now the same as for simple possession of most other controlled substances: for a first offender, a maximum term of imprisonment of one year; for repeat offenders, maximum terms of 2 years or 3 years, and minimum terms of 15 days or 90 days, depending on the prior convictions. *See* 21 U.S.C. 844(a).

Offenses under section 844(a) are referenced in Appendix A (Statutory Index) to § 2D2.1 (Unlawful Possession; Attempt or Conspiracy). Section 2D2.1 contains a cross reference at subsection (b)(1) that was established by the Commission in 1989 to address the statutory minimum in section 844(a). *See* USSG App. C, Amendment 304 (effective November 1, 1989). Under the cross reference, an offender who possessed more than 5 grams of crack cocaine is sentenced under the drug trafficking guideline, § 2D1.1.

To reflect the elimination of this statutory minimum, the proposed amendment deletes as obsolete the cross reference at § 2D2.1(b)(1). Conforming changes to the commentary are also made.

Proposed Amendment:

Section 2D2.1(b) is amended by striking "References" and inserting "Reference"; by striking subdivision (1); and by redesignating subdivision (2) as subdivision (1).

The Commentary to § 2D2.1 captioned "Background" is amended by striking "five" and inserting "three"; and by striking the last paragraph.

(C) Enhancements and Adjustments

Synopsis of Proposed Amendment: This part of the proposed amendment responds to sections 5, 6, and 7 of the Act, which contain directives to the Commission to provide certain enhancements and adjustments for drug trafficking offenses.

Violence Enhancement

First, this part of the proposed amendment responds to section 5 of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure that the guidelines provide an additional penalty increase of at least 2 offense levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense."

This part of the proposed amendment implements this directive by amending § 2D1.1 to provide a new specific offense characteristic at subsection (b)(2) that provides an enhancement of [2][4][6] levels if violence as described in the directive was involved. A conforming amendment to Application Note 3 is also made.

Bribery Enhancement

Second, this part of the proposed amendment responds to section 6(1) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if * * * the defendant bribed, or attempted to bribe, a Federal, State, or local law enforcement official in connection with a drug trafficking offense."

This part of the proposed amendment implements this directive by amending § 2D1.1 to establish a new specific offense characteristic at subsection (b)(11) that provides an enhancement of [2][4] levels if the defendant [was

convicted of bribing or attempting to bribe][bribed or attempted to bribe] a law enforcement officer to facilitate the commission of the offense.

Drug Establishment Enhancement

Third, this part of the proposed amendment responds to section 6(2) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if * * * the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856)."

This part of the proposed amendment implements this directive by amending § 2D1.1 to establish a new specific offense characteristic at subsection (b)(12) that provides an enhancement of [2][4] levels if the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as described in 21 U.S.C. 856.

Enhancement Based on "Super-Aggravating" Factors

Fourth, this part of the proposed amendment responds to section 6(3) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if * * * (A) the defendant is an organizer, leader, manager, or supervisor of drug trafficking activity subject to an aggravating role enhancement under the guidelines; and (B) the offense involved 1 or more of the following super-aggravating factors:"

(i) The defendant—

(I) Used another person to purchase, sell, transport, or store controlled substances;

(II) Used impulse, fear, friendship, affection, or some combination thereof to involve such person in the offense; and

(III) Such person had a minimum knowledge of the illegal enterprise and was to receive little or no compensation from the illegal transaction.

(ii) The defendant—

(I) Knowingly distributed a controlled substance to a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual;

(II) Knowingly involved a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual in drug trafficking;

(III) Knowingly distributed a controlled substance to an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct; or

(IV) Knowingly involved an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct, in the offense.

(iii) The defendant was involved in the importation into the United States of a controlled substance.

(iv) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense.

(v) The defendant committed the drug trafficking offense as part of a pattern of criminal conduct engaged in as a livelihood.

This part of the proposed amendment implements this directive by creating a new enhancement of [2][4] levels in subsection (b)(14) of § 2D1.1 if the defendant receives an adjustment under § 3B1.1 and the offense involved one or more of the factors described in the directive.

Downward Adjustment Based on Certain Mitigating Factors

Fifth, this part of the proposed amendment responds to section 7(2) of the Act, which directs the Commission to "review and amend the Federal sentencing guidelines and policy statements to ensure that * * * there is an additional reduction of 2 offense levels if the defendant—"

(A) Otherwise qualifies for a minimal role adjustment under the guidelines and had a minimum knowledge of the illegal enterprise;

(B) Was to receive no monetary compensation from the illegal transaction; and

(C) Was motivated by an intimate or familial relationship or by threats or fear when the defendant was otherwise unlikely to commit such an offense.

This part of the proposed amendment implements this directive by creating a new downward adjustment of 2 levels in subsection (b)(15) of § 2D1.1 if the defendant receives an adjustment under § 3B1.2(a) and the other factors described in the directive apply.

Technical and Conforming Changes

Finally, to reflect the renumbering of specific offense characteristics in § 2D1.1(b) by this part of the proposed amendment, this part of the proposed amendment makes technical and conforming changes to the commentary to § 2D1.1 and to § 2D1.14 (Narco-Terrorism).

Issues for comment are also included.

Proposed Amendment:

Section 2D1.1(b) is amended by redesignating subdivisions (10) and (11) as subdivisions (13) and (16); by redesignating subdivisions (2) through (9) as subdivisions (3) through (10); by inserting after subdivision (1) the following:

"(2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by [2][4][6] levels.";

by inserting after subdivision (10), as redesignated by this amendment, the following:

"(11) If the defendant [was convicted of bribing or attempting to bribe][bribed or attempted to bribe] a law enforcement officer to facilitate the commission of the offense, increase by [2][4] levels.

(12) If the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as described in 21 U.S.C. § 856, increase by [2][4] levels.";

by inserting after subdivision (13), as redesignated by this amendment, the following:

"(14) If the defendant receives an adjustment under § 3B1.1 (Aggravating Role) and the offense involved 1 or more of the following factors:

(A) (i) The defendant used impulse, fear, friendship, affection, or some combination thereof to involve another individual in the purchase, sale, transport, or storage of controlled substances; and (ii) the individual (I) was to receive little or no compensation from that purchase, sale, transport, or storage of controlled substances and (II) had minimal knowledge of [the scope and structure of] the enterprise;

(B) the defendant knowingly (i) distributed a controlled substance to an individual under the age of 18 years, an individual over the age of 64 years, a pregnant individual, an individual who was unusually vulnerable due to physical or mental condition, or an individual who was particularly susceptible to criminal conduct, or (ii) involved such an individual in the offense;

(C) the defendant was involved in the importation of a controlled substance;

(D) the defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice;

(E) the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood;

increase by [2][4] levels.

(15) If the defendant receives an adjustment under subsection (a) of § 3B1.2 (Mitigating Role) and the offense involved all of the following factors:

(A) The defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;

(B) the defendant was to receive no monetary compensation from the offense; and

(C) the defendant had minimal knowledge of [the scope and structure of] the enterprise,

decrease by 2 levels.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 3 by inserting "in subsection (b)(1)" after "weapon possession"; by striking "The adjustment" and inserting "Subsection (b)(1)"; by striking "the enhancement" and inserting "subsection (b)(1)"; and by striking the last sentence and inserting the following:

"Although the enhancements for weapon possession in subsection (b)(1) and violence in subsection (b)(2) may be triggered by the same conduct (such as where the defendant uses the possessed weapon to make a credible threat to use violence), they are to be applied cumulatively (added together), as is generally the case when two or more specific offense characteristics each apply. *See* § 1B1.1 (Application Instructions), Application Note 4(A).".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 8 in the last paragraph by striking "(2)" and inserting "(3)";

in Note 18 by striking "(2)" and inserting "(3)", and by striking "(4)" and inserting "(5)";

in Note 19 by striking "(10)" and inserting "(13)" in both places;

in Note 20 by striking "(10)" and inserting "(13)" in both places;

in Note 21 by striking "(11)" and inserting "(16)" each place it appears;

in Note 23 by striking "(6)" and inserting "(7)" each place it appears;

in Note 25 by striking "(7)" and inserting "(8)" in both places;

and in Note 26 by striking "(8)" and inserting "(9)" in both places.

The Commentary to § 2D1.1 captioned "Background" is amended by inserting after the paragraph that begins "For marihuana plants" the following:

"Subsection (b)(2) implements the directive to the Commission in section 5 of Public Law 111–220.";

In the paragraph that begins "Specific Offense Characteristic" by striking "Specific Offense Characteristic (b)(2)" and inserting "Subsection (b)(3)";

By inserting after the paragraph that begins "The dosage weight" the following:

"Subsection (b)(11) implements the directive to the Commission in section 6(1) of Public Law 111–220.

Subsection (b)(12) implements the directive to the Commission in section 6(2) of Public Law 111–220.";

In the paragraph that begins "Subsection (b)(10)(A)" by striking "(10)" and inserting "(13)";

In the paragraph that begins "Subsections (b)(10)(C)(ii)" by striking "(10)" and inserting "(13)";

and by adding at the end the following:

"Subsection (b)(14) implements the directive to the Commission in section 6(1) of Public Law 111–220.

Subsection (b)(15) implements the directive to the Commission in section 7(2) of Public Law 111–220."

Section 2D1.14(a)(1) is amended by striking "(11)" and inserting "(16)".

Issues for Comment:

1. In the proposed new violence enhancement in subsection (b)(2) of § 2D1.1, should the Commission provide a single level of enhancement for any conduct covered by the violence enhancement, or should the Commission distinguish among the different categories of conduct (use of violence; credible threat to use violence; directing others to use violence) by assigning different levels of enhancement to each?

2. The proposed amendment would amend Application Note 3 to § 2D1.1 to provide that the enhancements for weapon possession in subsection (b)(1) and violence in subsection (b)(2) are to be applied cumulatively. Should the Commission instead provide that the enhancements are not to be applied cumulatively?

3. The *Guidelines Manual* uses the term "violence" in several provisions, *e.g.,* § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) (the "safety valve" provision), without defining the term. Should the term "violence" be defined for purposes of the new violence enhancement in subsection (b)(2)? If so, what should the definition be? How, if at all, should such a definition interact with the other provisions in the Manual where the term is not defined?

4. The proposed new bribery enhancement in § 2D1.1(b)(11) may interact with other provisions in the *Guidelines Manual,* such as § 3C1.1 (Obstructing or Impeding the Administration of Justice). How should the new bribery enhancement interact with such other provisions? In particular, should they be applied cumulatively, or should they not be applied cumulatively?

5. The proposed new enhancement in § 2D1.1(b)(12) would apply if the defendant "maintained an establishment for the manufacture or distribution of a controlled substance, as described in 21 U.S.C. 856." Should this enhancement apply more broadly, *e.g.,* if the defendant "committed an offense described in 21 U.S.C. 856"? How should this proposed new enhancement in subsection (b)(12) interact with § 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy)? In particular, should the Commission raise the alternative base offense level 26 in § 2D1.8 to [28][30]?

6. As an alternative to establishing new specific offense characteristics at subsections (b)(14) and (15) of § 2D1.1, should the Commission instead implement these directives in Chapter Three? In particular, should the Commission amend §§ 3B1.1 and 3B1.2, or establish new Chapter Three guidelines, to provide the adjustments required by the directives?

7. For the proposed new specific offense characteristic in § 2D1.1(b)(14), should the Commission distinguish among the different factors described by the directive (*e.g.,* the factors set forth in subparagraphs (A) through (E) of the proposed new § 2D1.1(b)(14)) by assigning different levels to each? For example, should the most egregious factor be assigned an adjustment of [6] levels, and other factors assigned adjustments of [4] or [2] levels? If more than one factor is present, should that have a cumulative effect, warranting a higher total adjustment for that defendant? As an alternative, should the Commission provide an upward departure provision for cases in which more than one factor is present?

8. The proposed new specific offense characteristic in § 2D1.1(b)(14) may interact with other provisions in the *Guidelines Manual,* such as § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy), § 3B1.4 (Using a Minor to Commit a Crime), § 3C1.1 (Obstructing or Impeding the Administration of Justice), and § 4B1.3 (Criminal Livelihood). How should the new specific offense characteristic in subsection (b)(14) interact with such other provisions? In particular, should they be applied cumulatively, or should they not be applied cumulatively?

9. The proposed new specific offense characteristic in § 2D1.1(b)(14) and the proposed new specific offense characteristics in § 2D1.1 for bribery (see Part C of this proposed amendment) and maintenance of a drug establishment (see Part D of this proposed amendment) all respond to section 6 of the Fair Sentencing Act of 2010. How should these provisions interact with each

other? In particular, should they be applied cumulatively, or should they not be applied cumulatively?

10. This part of the proposed amendment establishes several new specific offense characteristics in § 2D1.1. What, if any, changes should the Commission make to other Chapter Two offense guidelines involving drug trafficking to ensure consistency and proportionality? Many such guidelines refer to § 2D1.1 in determining the offense level, but not in all cases. For example, if the base offense level is determined under subsection (a)(3) or (a)(4) of § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy), or under subsection (a)(2) of § 2D1.5 (Continuing Criminal Enterprise; Attempt or Conspiracy), or under § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), the new specific offense characteristics would not apply. Should the Commission establish similar specific offense characteristics in § 2D1.2, § 2D1.5, and § 2D1.11?

11. What other changes, if any, should the Commission make to the *Guidelines Manual* under the emergency authority provided by section 8 of the Act?

(D) Maximum Base Offense Level for Minimal Role ("Minimal Role Cap")

Synopsis of Proposed Amendment: This part of the proposed amendment responds to section 7(1) of the Act, which contains a directive to the Commission to "review and amend the Federal sentencing guidelines and policy statements to ensure that * * * if the defendant is subject to a minimal role adjustment under the guidelines, the base offense level for the defendant based solely on drug quantity shall not exceed level 32."

This part of the proposed amendment implements the directive by adding a new sentence to the end of § 2D1.1(a)(5) (the so-called "mitigating role cap"), to reflect the "minimal role cap" of level 32 required by the directive.

Proposed Amendment:

Section 2D1.1(a)(5) is amended by adding at the end the following:

"If the resulting offense level is greater than level 32 and the defendant receives an adjustment under subsection (a) of § 3B1.2, decrease to level 32.".

[FR Doc. 2010–22337 Filed 9–7–10; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to certain voting memberships of the Practitioners Advisory Group; request for applications.

SUMMARY: Because the terms of certain voting members of the Practitioners Advisory Group are expiring as of October 2010, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to succeed such a voting member to apply. The voting memberships covered by this notice are two circuit memberships (for the Second Circuit and District of Columbia Circuit) and one at-large voting membership. Applications should be received by the Commission not later than November 8, 2010. Applications may be sent to Michael Courlander at the address listed below.

DATES: Applications for voting membership of the Practitioners Advisory Group should be received not later than November 8, 2010.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) To assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice to apply.

Authority: 28 U.S.C. 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.2, 5.4.

William K. Sessions III,

Chair.

[FR Doc. 2010–22343 Filed 9–7–10; 8:45 am]

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Federal Register

Wednesday,
September 8, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised 12-Month Finding to List the Upper Missouri River Distinct Population Segment of Arctic Grayling as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2009-0065]

[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; Revised 12-Month Finding to List the Upper Missouri River Distinct Population Segment of Arctic Grayling as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of revised 12–month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service/USFWS), announce a revised 12–month finding on a petition to list the upper Missouri River Distinct Population Segment (Missouri River DPS) of Arctic grayling (*Thymallus arcticus*) as endangered or threatened under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the upper Missouri River DPS of Arctic grayling as endangered or threatened is warranted. However, listing the upper Missouri River DPS of Arctic grayling is currently precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12–month finding, we will add the upper Missouri River DPS of Arctic grayling to our candidate species list. We will develop a proposed rule to list this DPS as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In the interim, we will address the status of this DPS through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on September 8, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number **FWS-R6-ES-2009-0065**. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT 59601. Please submit any new information, materials, comments, or questions concerning this finding to the above street address (Attention: Arctic grayling).

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, Montana Field Office (see **ADDRESSES**); by telephone at 406-449-5225; or by facsimile at 406-449-5339. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), requires that, for any petition containing substantial scientific or commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the ESA requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Actions

We have published a number of documents on Arctic grayling and have been involved in litigation over previous findings. We describe our actions relevant to this notice below.

We initiated a status review for the Montana Arctic grayling (*Thymallus arcticus montanus*) in a **Federal Register** notice on December 30, 1982 (47 FR 58454). In that notice, we designated the purported subspecies, Montana Arctic grayling, as a Category 2 species. At that time, we designated a species as Category 2 if a listing as endangered or threatened was possibly appropriate, but we did not have sufficient data to support a proposed rule to list the species.

On October 9, 1991, the Biodiversity Legal Foundation and George Wuerthner petitioned us to list the fluvial (riverine populations) of Arctic grayling in the upper Missouri River basin as an endangered species throughout its historical range in the coterminous United States. We published a notice of a 90–day finding in the January 19, 1993, **Federal Register** (58 FR 4975), concluding the petitioners presented substantial information indicating that listing the fluvial Arctic grayling of the upper Missouri River in Montana and northwestern Wyoming may be warranted. This finding noted that taxonomic recognition of the Montana Arctic grayling (*Thymallus arcticus montanus*) as a subspecies (previously designated as a category 2 species) was not widely accepted, and that the scientific community generally considered this population a geographically isolated member of the wider species (*T. arcticus*).

On July 25, 1994, we published a notice of a 12–month finding in the **Federal Register** (59 FR 37738), concluding that listing the DPS of fluvial Arctic grayling in the upper Missouri River was warranted but precluded by other higher priority listing actions. This DPS determination predated our DPS policy (61 FR 4722, February 7, 1996), so the entity did not undergo a DPS analysis as described in the policy. The 1994 finding placed fluvial Arctic grayling of the upper Missouri River on the candidate list and assigned it a listing priority of 9. On May 4, 2004, we elevated the listing priority number of the fluvial Arctic grayling to 3 (69 FR 24881).

On May 31, 2003, the Center for Biological Diversity and Western Watersheds Project (Plaintiffs) filed a complaint in U.S. District Court in Washington, D.C., challenging our "warranted but precluded" determination for Montana fluvial Arctic grayling. On July 22, 2004, the Plaintiffs amended their complaint to challenge our failure to emergency list this population. We settled with the Plaintiffs in August 2005, and we agreed to submit a final determination on whether this population warranted listing as endangered or threatened to the **Federal Register** on or before April 16, 2007.

On April 24, 2007, we published a revised 12–month finding on the petition to list the upper Missouri River DPS of fluvial Arctic grayling (72 FR 20305) ("2007 finding"). In this finding, we determined that fluvial Arctic grayling of the upper Missouri River did not constitute a species, subspecies, or DPS under the ESA. Therefore, we found that the upper Missouri River population of fluvial Arctic grayling was not a listable entity under the ESA, and as a result, listing was not warranted. With that notice, we withdrew the fluvial Arctic grayling from the candidate list.

On November 15, 2007, the Center for Biological Diversity, Federation of Fly Fishers, Western Watersheds Project, George Wuerthner, and Pat Munday filed a complaint (CV-07-152, in the District Court of Montana) to challenge our 2007 finding. We settled this litigation on October 5, 2009. In the stipulated settlement, we agreed to: (a) Publish, on or before December 31, 2009, a notice in the **Federal Register** soliciting information on the status of the upper Missouri River Arctic grayling; and (b) submit, on or before August 30, 2010, a new 12–month finding for the upper Missouri River Arctic grayling to the **Federal Register**.

On October 28, 2009, we published a notice of intent to conduct a status review of Arctic grayling (*Thymallus arcticus*) in the upper Missouri River system (74 FR 55524). To ensure the status review was based on the best available scientific and commercial data, we requested information on the taxonomy, biology, ecology, genetics, and population status of the Arctic grayling of the upper Missouri River system; information relevant to consideration of the potential DPS status of Arctic grayling of the upper Missouri River system; threats to the species; and conservation actions being implemented to reduce those threats in the upper Missouri River system. The notice further specified that the status review may consider various DPS designations that include different life histories of Arctic grayling in the upper Missouri River system. Specifically, we may consider DPS configurations that include: Fluvial, adfluvial (lake populations), or all life histories of Arctic grayling in the upper Missouri River system.

This notice constitutes the revised 12–month finding ("2010 finding") on whether to list the upper Missouri River DPS of Arctic grayling (*Thymallus arcticus*) as endangered or threatened.

Taxonomy and Species Description

The Arctic grayling (*Thymallus arcticus*) belongs to the family Salmonidae (salmon, trout, charr, whitefishes), subfamily *Thymallinae* (graylings), and it is represented by a single genus, *Thymallus*. Scott and Crossman (1998, p. 301) recognize four species within the genus: *T. articus* (Arctic grayling), *T. thymallus* (European grayling), *T. brevirostris* (Mongolian grayling), and *T. nigrescens* (Lake Kosgol, Mongolia). Recent research focusing on Eurasian *Thymallus* (Koskinen *et al.* 2002, entire; Froufe *et al.* 2003, entire; Froufe *et al.* 2005, entire; Weiss *et al.* 2006, entire) indicates that the systematic diversity of the genus is greater than previously thought, or at least needs better description (Knizhin *et al.* 2008, pp. 725–726, 729; Knizhin and Weiss 2009, pp. 1, 7–8; Weiss *et al.* 2007, p. 384).

Arctic grayling have elongate, laterally compressed, trout-like bodies with deeply forked tails, and adults typically average 300-380 millimeters (mm) (12-15 inches (in.)) in length. Coloration can be striking, and varies from silvery or iridescent blue and lavender, to dark blue (Behnke 2002, pp. 327–328). The sides are marked with a varying number of V-shaped or diamond-shaped spots (Scott and Crossman 1998, p. 301). During the spawning period, the colors darken and the males become more brilliantly colored than the females. A prominent morphological feature of Arctic grayling is the sail-like dorsal fin, which is large and vividly colored with rows of orange to bright green spots, and often has an orange border (Behnke 2002, pp. 327–328).

Distribution

Arctic grayling are native to Arctic Ocean drainages of Alaska and northwestern Canada, as far east as Hudson's Bay, and westward across northern Eurasia to the Ural Mountains (Scott and Crossman 1998, pp. 301–302; Froufe *et al.* 2005, pp. 106–107; Weiss *et al.* 2006, pp. 511–512; see Figure 1 below). In North America, they are native to northern Pacific Ocean drainages as far south as the Stikine River in British Columbia (Nelson and Paetz 1991, pp. 253–256; Behnke 2002, pp. 327–331).

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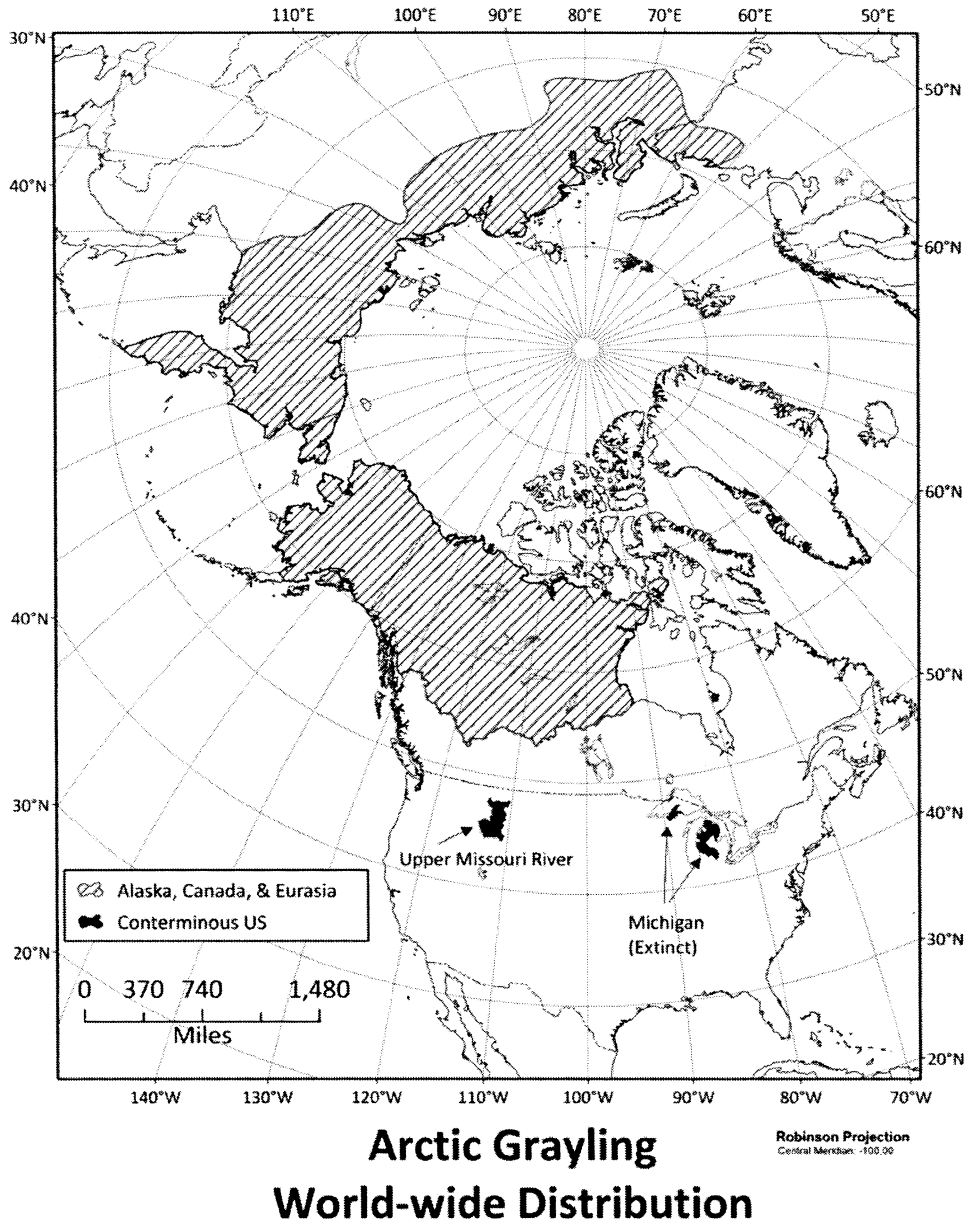


FIGURE 1. Approximate world-wide distribution of Arctic grayling (*Thymallus arcticus*) at the end of the most recent glacial cycle. The Missouri River distribution is based on Kaya (1992, pp. 47-51). The distribution of the extinct Michigan population is based on Vincent (1962, p. 12) and the University of Michigan (2010). The North American distribution in Canada and Alaska is based on Behnke (2002, p. 330) and Scott and Crossman (1998, pp. 301-302). The Eurasian distribution is based on Knizhin (2009, p. 32) and Knizhin (2010, pers. comm.).

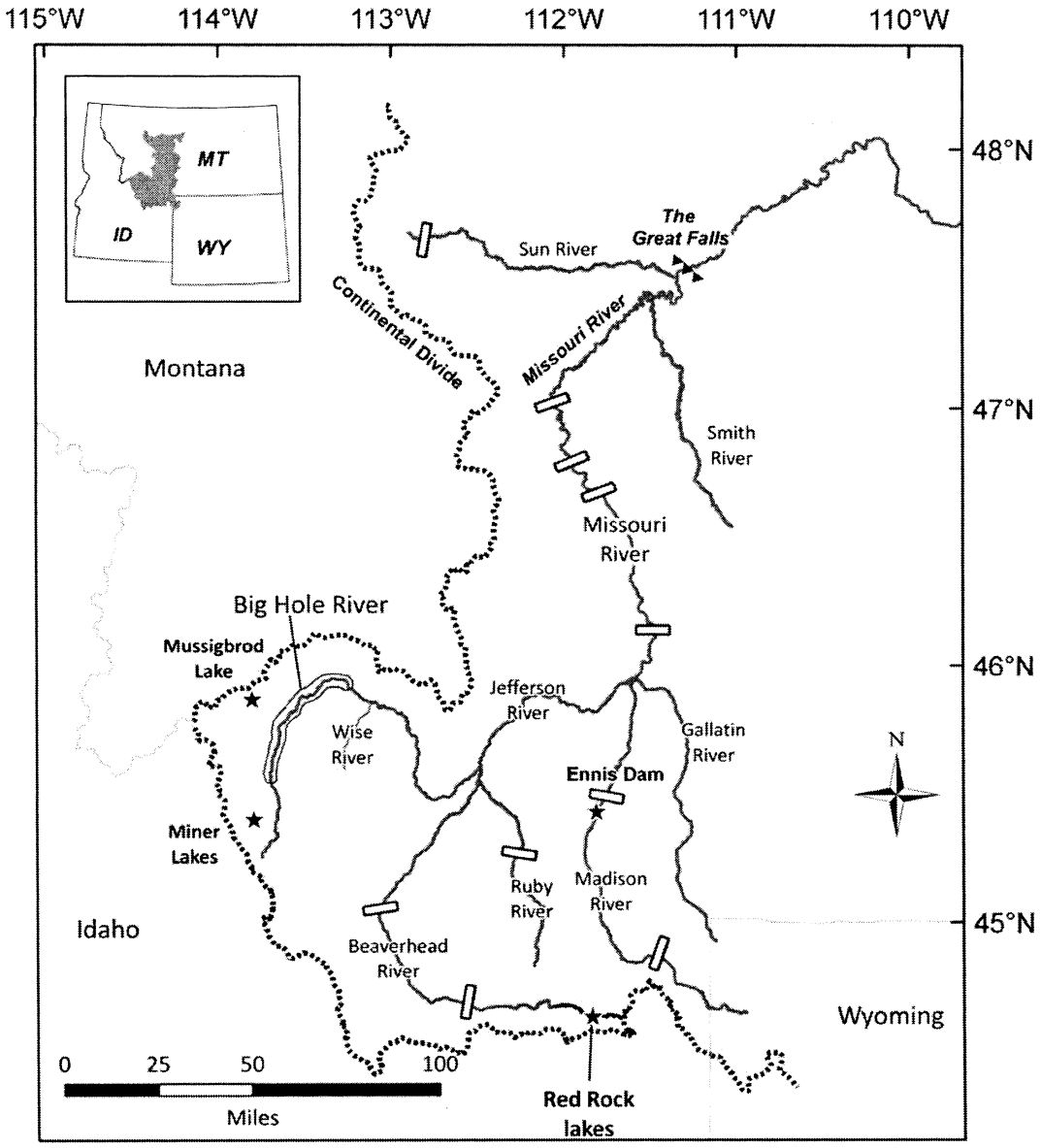
Arctic grayling remains widely distributed across its native range, but within North America, the species has experienced range decline or contraction at the southern limits of its distribution. In British Columbia, Canada, populations in the Williston River watershed are designated as a provincial "red list" species, meaning the population is a candidate for further evaluation to determine if it should be granted endangered (facing imminent extirpation or extinction) or threatened status (likely to become endangered) (British Columbia Conservation Data Centre 2010). In Alberta, Canada, Arctic grayling are native to the Athabasca, Peace, and Hay River drainages. In Alberta, the species has undergone a range contraction of about 40 percent, and half of the province's subpopulations have declined in abundance by more than 90 percent (Alberta Sustainable Resource Development (ASRD) 2005, p. iv).

Distribution in the Conterminous United States

Two disjunct groups of Arctic grayling were native to the conterminous United States: One in the upper Missouri River basin in Montana and Wyoming (extant in Montana, see Figure 2), and another in Michigan that was extirpated in the late 1930s (Hubbs and Lagler 1949, p. 44). Michigan grayling formerly occurred in the Otter River of the Lake Superior drainage in northern Michigan and in streams of the lower peninsula of Michigan in both the Lake Michigan and Lake Huron drainages including the Au Sable, Cheboygan, Jordan, Pigeon, and Rifle Rivers (Vincent 1962, p. 12).

Introduced Lake Dwelling Arctic Grayling in the Upper Missouri River

System and western U.S. populations of Arctic grayling have been established in lakes outside their native range in Arizona, Colorado, Idaho, Montana, New Mexico, Utah, Washington, and Wyoming (Vincent 1962, p. 15; Montana Fisheries Information System (MFISH) 2009; NatureServe 2010). Stocking of hatchery grayling in Montana has been particularly extensive, and there are thought to be up to 78 introduced lacustrine (lake-dwelling) populations resulting from these introductions (see Table 1 below). Over three-quarters of these introductions (79.5 percent) were established outside the native geographic range of upper Missouri River grayling, while only 16 (20.5 percent) were established within the watershed boundary of the upper Missouri River system.



Historical and current distribution of Arctic grayling in the Upper Missouri River basin

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FIGURE 2. Historical (dark grey lines) and current distribution (stars and circled portion of Big Hole River) of native Arctic grayling in the upper Missouri River basin. White bars denote mainstem river dams that are total barriers to upstream passage by fish.

TABLE 1. INTRODUCED LAKE-DWELLING POPULATIONS OF ARCTIC GRAYLING IN MONTANA. THE PRIMARY DATA SOURCE FOR THESE DESIGNATIONS IS MFISH (2009).

River Basin	Number of Introduced (Exotic) Populations[a]
Outside Native Geographic Range In Montana	
Columbia River	23
Middle Missouri River	2
Saskatchewan River	1
Yellowstone River	36[b]
Within Watershed Boundary Of Native Geographic Range In Montana	
Upper Missouri River	16
Total Exotic Populations	78

[a]List of populations does not include lake populations derived from attempts to re-establish fluvial populations in Montana, native adfluvial populations, or genetic reserves of Big Hole River grayling.
[b]Many of these populations may not reproduce naturally and are only sustained through repeated stocking (Montana Fish, Wildlife and Parks 2009, entire).

For the purposes of this finding, we are analyzing a petitioned entity that includes, at its maximum extent, populations of Arctic grayling considered native to the upper Missouri River. Introduced populations present in Montana (e.g., Table 1) or elsewhere are not considered as part of the listable entity because we do not consider them to be native populations. Neither the Act nor our implementing regulations expressly address whether introduced populations should be considered part of an entity being evaluated for listing, and no Service policy addresses the issue. Consequently, in our evaluation of whether or not to include introduced populations in the potential listable entity we considered the following: (1) Our interpretation of the intent of the Act with respect to the disposition of native populations, (2) a policy used by the National Marine Fishery Service (NMFS) to evaluate whether hatchery-origin populations warrant inclusion in the listable entity, and (3) a set of guidelines from another organization (International Union for Conservation of Nature and Natural Resources (IUCN)) with specific criteria for evaluating the conservation contribution of introduced populations.

Intent of the Endangered Species Act

The primary purpose of the Act is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved. The Service has interpreted the Act to provide a statutory directive to conserve species in their native ecosystems (49 FR 33890, August 27, 1984) and to conserve genetic resources and biodiversity over a representative portion of a taxon's historical occurrence (61 FR 4723, February 7, 1996). This priority on natural populations is evident in the Service's DPS policy within the third significance criteria. In that, a discrete population segment may be significant if it represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside of its historical range.

National Marine Fishery Service Hatchery Policy

In 2005, the NMFS published a final policy on the consideration of hatchery-origin fish in Endangered Species Act listing determinations for Pacific salmon and steelhead (anadromous *Oncorhynchus* spp.) (NMFS 2005, entire). A central tenet of this policy is the primacy of the conservation of naturally spawning salmon populations and the ecosystems on which they depend, consistent with the intent of the Act (NMFS 2005, pp. 37211, 37214). The policy recognizes that properly managed hatchery programs may provide some conservation benefit to the evolutionary significant unit (ESU, which is analogous to a DPS but applied to Pacific salmon) (NMFS 2005, p. 37211), and that hatchery stocks that contribute to survival and recovery of an ESU are considered during a listing decision (NMFS 2005, p. 37209). The policy states that since hatchery stocks are established and maintained with the intent of furthering the viability of wild populations in the ESU, that those hatchery populations have an explicit conservation value. Genetic divergence is the preferred metric to determine if hatchery fish should be included in the ESU, but NMFS recognizes that these data may be lacking in most cases (NMFS 2005, p. 37209). Thus, proxies for genetic divergence can be used, such as the length of time a stock has been isolated from its source population, the degree to which natural broodstock has been regularly incorporated into the hatchery population, the history of non-ESU fish or eggs in the hatchery population, and the attention given to genetic considerations in selecting and mating broodstocks (NMFS 2005, p. 37209).

The NMFS policy applies to artificially propagated (hatchery) populations. In this finding, however, the Service is deciding whether self-sustaining populations introduced outside its natural range should be included in the listable entity. Thus, the NMFS policy is not directly applicable. Nonetheless, if the NFMS policy's criteria are applied to the introduced lake-dwelling populations of Arctic grayling in Montana and elsewhere, these populations do not appear to warrant inclusion in the entity being evaluated for listing. First, there does not appear to be any formally recognized conservation value for the

introduced populations of Arctic grayling, and they are not being used in restoration programs. Recent genetic analysis indicates that many of the introduced Arctic grayling populations in Montana are derived, in part, from stocks in the Red Rock Lakes system (Peterson and Ardren 2009, p. 1767). Nonetheless, there have been concerns that introduced, lake-dwelling populations could pose genetic risks to the native fluvial population (Arctic Grayling Workgroup (AGW) 1995, p. 15), and in practice, these introduced populations have not been used for any conservation purpose. In fact, efforts are currently underway to establish a genetically pure brood reserve population of Red Rock Lakes grayling to be used for conservation purposes (Jordan 2010, pers. comm.), analogous to the brood reserves maintained for Arctic grayling from the Big Hole River (Rens and Magee 2007, pp. 22–24).

Second, introduced populations in lakes have apparently been isolated from their original source stock for decades without any supplementation from the wild. These populations were apparently established without any formal genetic consideration to selecting and mating broodstock, the source populations were not well documented (Peterson and Ardren 2009, p. 1767), and the primary intent of culturing and introducing these grayling appears to have been to provide recreational fishing opportunities in high mountain lakes.

Guidelines Used in Other Evaluation Systems

The IUCN uses its Red List system to evaluate the conservation status and relative risk of extinction for species, and to catalogue and highlight plant and animal species that are facing a higher risk of global extinction (*http://www.iucnredlist.org*). IUCN does not use the term "listable entity" as the Service does; however, IUCN does clarify that their conservation ranking criteria apply to any taxonomic group at the species level or below (IUCN 2001, p.4). Further, the IUCN guidelines for species status and scope of the categorization process focus on wild populations inside their natural range (IUCN 2001, p. 4; 2003, p. 10) or so-called "benign" or "conservation introductions," which are defined as attempts to establish a species, for the purpose of conservation, outside its recorded distribution, when suitable habitat is lacking within the historical range (IUCN 1998, p. 6; 2003, pp. 6, 10). Guidelines for evaluating conservation status under the IUCN exclude introduced populations located outside the recorded distribution of the species if such populations were established for commercial or sporting purposes (IUCN 1998, p. 5; 2003, p. 24). In effect, the IUCN delineates between introduced and native populations in that non-benign introductions do not qualify for evaluation under the IUCN Red List system. Naturalized populations of Arctic grayling in lakes thus do not meet the IUCN criterion for a wild population that should be considered when evaluating the species status for two reasons. First, there remains 'suitable habitat' for Arctic grayling in its native range, as evidenced by extant native populations in the Big Hole River, Madison River, Miner Lake, Mussigbrod Lake, and Red Rock Lakes. Second, the naturalized populations derived from widespread stocking were apparently aimed at establishing recreational fisheries.

Our interpretation is that the ESA is intended to preserve native populations in their ecosystems. While hatchery or introduced populations of fishes may have some conservation value, this does not appear to be the case with introduced populations of Arctic grayling in the conterminous United States. These populations were apparently established to support recreational fisheries, and without any formal genetic consideration to selecting and mating broodstock, and are not part of any conservation program to benefit the native populations. Consequently, we do not consider the introduced populations of Arctic grayling in Montana and elsewhere in the conterminous United States, including those in lakes and in an irrigation canal (Sun River Slope Canal), to be part of the listable entity.

Native Distribution in the Upper Missouri River System

The first Euro-American "discovery" of Arctic grayling in North America is attributed to members of the Lewis and Clark Expedition, who encountered the species in the Beaverhead River in August 1805 (Nell and Taylor 1996, p. 133). Vincent (1962, p. 11) and Kaya (1992, pp. 47–51) synthesized accounts of Arctic grayling occurrence and abundance from historical surveys and contemporary monitoring to determine the historical distribution of the species in the upper Missouri River system (Figure 2). We base our conclusions on the historical distribution of Arctic grayling in the upper Missouri River basin on these two reviews. Arctic grayling were widely but irregularly distributed in the upper Missouri River system above the Great Falls in Montana and in northwest Wyoming within the present-day location of Yellowstone National Park (Vincent 1962, p. 11). They were estimated to inhabit up to 2,000 kilometers (km) (1,250 miles (mi)) of stream habitat until the early 20th century (Kaya 1992, pp. 47–51). Arctic grayling were reported in the mainstem Missouri River, as well as in the Smith, Sun, Jefferson, Madison, Gallatin, Big Hole, Beaverhead, and Red Rock Rivers (Vincent 1962, p. 11; Kaya 1992, pp. 47–51; USFWS 2007; 72 FR 20307, April 24, 2007). "Old-timer" accounts report that the species may have been present in the Ruby River, at least seasonally (Magee 2005, pers. comm.), and were observed as recently as the early 1970s (Holton, undated).

Fluvial Arctic grayling were historically widely distributed in the upper Missouri River basin, but a few adfluvial populations also were native to the basin. For example, Arctic grayling are native to Red Rock Lakes, in the headwaters of the Beaverhead River (Vincent 1962, pp. 112–121; Kaya 1992, p. 47). Vincent (1962, p. 120) stated that Red Rock Lakes were the only natural lakes in the upper Missouri River basin accessible to colonization by Arctic grayling, and concluded that grayling there were the only native adfluvial population in the basin. However, it appears that Arctic grayling also were native to Elk Lake (in the Red Rocks drainage; Kaya 1990, p. 44) and a few small lakes in the upper Big Hole River drainage (Peterson and Ardren 2009, p. 1768).

The distribution of native Arctic grayling in the upper Missouri River went through a dramatic reduction in the first 50 years of the 20th century, especially in riverine habitats (Vincent 1962, pp. 86–90, 97–122, 127–129; Kaya 1992, pp. 47–53). The native populations that formerly resided in the Smith, Sun, Jefferson, Beaverhead, Gallatin, and mainstem Missouri Rivers are considered extirpated, and the only remaining indigenous fluvial population is found in the Big Hole River and some if its tributaries (Kaya 1992, pp. 51–53). The fluvial form currently occupies only 4 to 5 percent of its historic range in the Missouri River system (Kaya 1992, p. 51). Other remaining native populations in the upper Missouri River occur in two small, headwater lakes in the upper Big Hole River system (Miner and Mussigbrod Lakes); the Madison River upstream from Ennis Reservoir; and the Red Rock Lakes in the headwaters of the Beaverhead River system (Everett 1986, p. 7; Kaya 1992, p. 53; Peterson and Ardren 2009, pp. 1762, 1768; Figure 1 above, and Table 2 below).

TABLE 2. EXTANT NATIVE ARCTIC GRAYLING POPULATIONS IN THE UPPER MISSOURI RIVER BASIN.

Big Hole River Drainage[a]
1. Big Hole River
2. Miner Lake
3. Mussigbrod Lake
Madison River Drainage
4. Madison River-Ennis Reservoir
Beaverhead River Drainage
5. Red Rock Lakes

[a]Arctic grayling also occur in Pintler Lake in the Big Hole River drainage, but this population has not been evaluated with genetic markers to determine whether it constitutes a native remnant population.

Origins, Biogeography, and Genetics of Arctic Grayling in North America

North American Arctic grayling are most likely descended from Eurasian *Thymallus* that crossed the Bering land bridge during or before the Pleistocene glacial period (Stamford and Taylor 2004, pp. 1533, 1546). A Eurasian origin is suggested by the substantial taxonomic diversity found in the genus in that region. There were multiple opportunities for freshwater faunal exchange between North America and Asia during the Pleistocene, but genetic divergence between North American and Eurasian Arctic grayling suggests that the species could have colonized North America as early as the mid-late Pliocene (more than 3 million years ago) (Stamford and Taylor 2004, p. 1546).

The North American distribution of Arctic grayling was strongly influenced by patterns of glaciation. Genetic studies of grayling using mitochondrial DNA (mtDNA, maternally-inherited DNA located in cellular organelles called mitochondria) and microsatellite DNA (repeating sequences of nuclear DNA) have shown that North American Arctic grayling consist of at least three major lineages that originated in distinct Pleistocene glacial refugia (Stamford and Taylor 2004, p. 1533). These three groups include a South Beringia lineage found in western Alaska to northern British Columbia, Canada; a North Beringia lineage found on the North Slope of Alaska, the lower Mackenzie River, and to eastern Saskatchewan; and a Nahanni lineage found in the lower Liard River and the upper Mackenzie River drainage (Stamford and Taylor 2004, pp. 1533, 1540). The Nahanni lineage is the most genetically distinct group (Stamford and Taylor 2004, pp. 1541–1543). Arctic grayling from the upper Missouri River basin were tentatively placed in the North Beringia lineage because a small sample (three individuals) of Montana grayling shared a mtDNA haplotype (form of the mtDNA) with populations in Saskatchewan and the lower Peace River, British Columbia (Stamford and Taylor 2004, p. 1538).

The existing mtDNA data suggest that Missouri River Arctic grayling share a common ancestry with the North Beringia lineage, but other genetic markers and biogeographic history indicate that Missouri River grayling have been physically and reproductively isolated from northern populations for millennia. The most recent ancestors of Missouri River Arctic grayling likely spent the last glacial cycle in an ice-free refuge south of the Laurentide and Cordilleran ice sheets. Pre-glacial colonization of the Missouri River basin by Arctic grayling was possible because the river flowed to the north and drained into the Arctic-Hudson Bay prior to the last glacial cycle (Cross *et al.* 1986, pp. 374–375; Pielou 1991, pp. 194–195). Low mtDNA diversity observed in a small number of Montana grayling samples and a shared ancestry with Arctic grayling from the north Beringia lineage suggest a more recent, post-glacial colonization of the upper Missouri River basin. In contrast, microsatellite DNA show substantial divergence between Montana and Saskatchewan (i.e., same putative mtDNA lineage) (Peterson and Ardren 2009, entire). Differences in the frequency and size distribution of microsatellite alleles between Montana populations and two Saskatchewan populations indicate that Montana grayling have been isolated long enough for mutations (i.e., evolution) to be responsible for the observed genetic differences.

Additional comparison of 21 Arctic grayling populations from Alaska, Canada, and the Missouri River basin using 9 of the same microsatellite loci as Peterson and Ardren (2009, entire) further supports the distinction of Missouri River Arctic grayling relative to populations elsewhere in North America (USFWS, unpublished data). Analyses of these data using two different methods clearly separates sample fish from 21 populations into two clusters: one cluster representing populations from the upper Missouri River basin, and another cluster representing populations from Canada and Alaska (USFWS, unpublished data). These new data, although not yet peer reviewed, support the interpretation that the previous analyses of Stamford and Taylor (2004, entire) underestimated the distinctiveness of Missouri River Arctic grayling relative to other sample populations, likely because of the combined effect of small sample sizes and the lack of variation observed in the Missouri River for the markers used in that study (Stamford and Taylor 2004, pp. 1537–1538). Thus, these recent microsatellite DNA data suggest that Arctic grayling may have colonized the Missouri River before the onset of Wisconsin glaciation (more than 80,000 years ago).

Genetic relationships among native and introduced populations of Arctic grayling in Montana have recently been investigated (Peterson and Ardren 2009, entire). Introduced, lake-dwelling populations of Arctic grayling trace much of their original ancestry to Red Rock Lakes (Peterson and Ardren 2009, p. 1767), and stocking of hatchery grayling did not appear to have a large effect on the genetic composition of the extant native populations (Peterson and Ardren 2009, p. 1768). Differences between native populations of the two grayling ecotypes (adfluvial, fluvial) do not appear to be as large as differences resulting from geography (i.e., drainage of origin).

Habitat

Arctic grayling generally require clear, cold water. Selong *et al.* (2001, p. 1032) characterized Arctic grayling as belonging to a "coldwater" group of salmonids, which also includes bull trout (*Salvelinus confluentus*) and Arctic char (*Salvelinus alpinus*). Hubert *et al.* (1985, p. 24) developed a habitat suitability index study for Arctic grayling and concluded that thermal habitat was optimal between 7 to 17 °C (45 to 63 °F), but became unsuitable above 20°C (68°F). Arctic grayling fry may be more tolerant of high water temperature than adults (LaPerriere and Carlson 1973, p. 30; Feldmeth and Eriksen 1978, p. 2041).

Having a broad, nearly-circumpolar distribution, Arctic grayling occupy a variety of habitats including small streams, large rivers, lakes, and even bogs (Northcote 1995, pp. 152–153; Scott and Crossman 1998, p. 303). They may even enter brackish water (less than or equal to 4 parts per thousand) when migrating between adjacent river systems (West *et al.* 1992, pp. 713–714). Native populations are found at elevations ranging from near sea level, such as in Bristol Bay, Alaska, to high-elevation montane valleys (more than 1,830 meters (m) or 6,000 feet (ft)), such as the Big Hole River and Centennial Valley in southwestern Montana. Despite this broad distribution, Arctic grayling have specific habitat requirements that can constrain their local distributions, especially water temperature and channel gradient. At the local scale, Arctic grayling prefer cold water and are often associated with spring-fed habitats in regions with warmer climates (Vincent 1962, p. 33). Arctic grayling are generally not found in swift, high-gradient streams, and Vincent (1962, p. 36–37, 41–43) characterized typical Arctic grayling habitat in Montana (and Michigan) as low-to-moderate gradient (less than 4 percent) streams and rivers with low-to-moderate water velocities (less than 60 centimeters/sec). Juvenile and adult Arctic grayling in streams and rivers spend much of their time in pool habitat (Kaya 1990 and references therein, p. 20; Lamothe and Magee 2003, pp. 13–14).

Breeding

Arctic grayling typically spawn in the spring or early summer, depending on latitude and elevation (Northcote 1995, p. 149). In Montana, Arctic grayling generally spawn from late April to mid-May by depositing adhesive eggs over gravel substrate without excavating a nest (Kaya 1990, p. 13; Northcote 1995, p. 151). In general, the reproductive ecology of Arctic grayling differs from other salmonid species (trout and salmon) in that Arctic grayling eggs tend to be comparatively small; thus, they have higher relative fecundity (females have more eggs per unit body size). Males establish and defend spawning territories rather than defending access to females (Northcote 1995, pp. 146, 150–151). The time required for development of eggs from embryo until they emerge from stream gravel and become swim-up fry depends on water temperature (Northcote 1995, p. 151). In the upper Missouri River basin, development from embryo to fry averages about 3 weeks (Kaya 1990, pp. 16–17). Small, weakly swimming fry (typically 1–1.5 centimeters (cm) (0.4–0.6 in.) at emergence) prefer low-velocity stream habitats (Armstrong 1986, p. 6; Kaya 1990, pp. 23–24; Northcote 1995, p. 151).

Arctic grayling of all ages feed primarily on aquatic and terrestrial invertebrates captured on or near the water surface, but also will feed opportunistically on fish and fish eggs (Northcote 1995, pp. 153–154; Behnke 2002, p. 328). Feeding locations for individual fish are typically established and maintained through size-mediated dominance hierarchies where larger individuals defend favorable feeding positions (Hughes 1992, p. 1996).

Life History Diversity

Migratory behavior is a common life-history trait in salmonid fishes such as Arctic grayling (Armstrong 1986, pp. 7–8; Northcote 1995, pp. 156–158; 1997, pp. 1029, 1031–1032, 1034). In general, migratory behavior in Arctic grayling and other salmonids results in cyclic patterns of movement between refuge, rearing-feeding, and spawning habitats (Northcote 1997, p. 1029).

Arctic grayling may move to refuge habitat as part of a regular seasonal migration (e.g., in winter), or in response to episodic environmental stressors (e.g., high summer water temperatures). In Alaska, Arctic grayling in rivers typically migrate downstream in the fall, moving into larger streams or mainstem rivers that do not completely freeze (Armstrong 1986, p. 7). In Arctic rivers, fish often seek overwintering habitat influenced by groundwater (Armstrong 1986, p. 7). In some drainages, individual fish may migrate considerable distances (greater than 150 km or 90 mi) to overwintering habitats (Armstrong 1986, p. 7). In the Big Hole River, Montana, similar downstream and long-distance movement to overwintering habitat has been observed in Arctic grayling (Shepard and Oswald 1989, pp. 18–21, 27). In addition, Arctic grayling in the Big Hole River may move downstream in proximity to colder tributary streams in summer when thermal conditions in the mainstem river become stressful (Lamothe and Magee 2003, p. 17).

In spring, mature Arctic grayling leave overwintering areas and migrate to suitable spawning sites. In river systems, this typically involves an upstream migration to tributary streams or shallow riffles within the mainstem (Armstrong 1986, p. 8). Arctic grayling in lakes typically migrate to either the inlet or outlet to spawn (Armstrong 1986, p. 8; Northcote 1997, p. 148). In either situation, Arctic grayling typically exhibit natal homing, whereby individuals spawn in or near the location where they were born (Northcote 1997, pp. 157–160).

Fry from river populations typically seek feeding and rearing habitats in the vicinity where they were spawned (Armstrong 1986, pp. 6–7; Northcote 1995, p. 156), while those from lake populations migrate downstream (inlet spawners) or upstream (outlet spawners) to the adjacent lake. Following spawning, adults move to appropriate feeding areas if they are not adjacent to spawning habitat (Armstrong 1986, pp. 7–8). Juvenile Arctic grayling may undertake seasonal migrations between feeding and overwintering habitats until they reach maturity and add the spawning migration to this cycle (Northcote 1995, pp. 156–157).

Life History Diversity in Arctic Grayling in the Upper Missouri River

Two general life-history forms or ecotypes of native Arctic grayling occur in the upper Missouri River Arctic: Fluvial and adfluvial. Fluvial fish use river or stream (lotic) habitat for all of their life cycles and may undergo extensive migrations within river habitat. Adfluvial fish live in lakes and migrate to tributary streams to spawn. These same life-history forms also are expressed by Arctic grayling elsewhere in North America (Northcote 1997, p. 1030). Historically, the fluvial life-history form predominated in the Missouri River basin above the Great Falls, perhaps because there were only a few lakes accessible to natural colonization of Arctic grayling that would permit expression of the adfluvial ecotype (Kaya 1992, p. 47). The fluvial and adfluvial life-history forms of Arctic grayling in the upper Missouri River do not appear to represent distinct evolutionary lineages. Instead, they appear to represent an example of adaptive radiation (Schluter 2000, p. 1), whereby the forms

differentiated from a common ancestor developed traits that allowed them to exploit different habitats. The primary evidence for this conclusion is genetic data that indicate that within the Missouri River basin the two ecotypes are more closely related to each other than they are to the same ecotype elsewhere in North America (Redenbach and Taylor 1999, pp. 27–28; Stamford and Taylor 2004, p. 1538; Peterson and Ardren 2009, p. 1766). Historically, there may have been some genetic exchange between the two life-history forms as individuals strayed or dispersed into different populations (Peterson and Ardren 2009, p. 1770), but the genetic structure of current populations in the upper Missouri River basin is consistent with reproductive isolation.

The fluvial and adfluvial forms of Arctic grayling appear to differ in their genetic characteristics, but there appears to be some plasticity in behavior where individuals from a population can exhibit a range of behaviors. Arctic grayling fry in Montana can exhibit heritable, genetically-based differences in swimming behavior between fluvial and adfluvial ecotypes (Kaya 1991, pp. 53, 56–58; Kaya and Jeanes 1995, pp. 454, 456). Progeny of Arctic grayling from the fluvial ecotype exhibited a greater tendency to hold their position in flowing water relative to progeny from adfluvial ecotypes (Kaya 1991, pp. 53, 56–58; Kaya and Jeanes 1995, pp. 454, 456). Similarly, young grayling from inlet and outlet spawning adfluvial ecotypes exhibited an innate tendency to move downstream and upstream, respectively (Kaya 1989, pp. 478–480). All three studies (Kaya 1989, entire; 1991, entire; Kaya and Jeanes 1995, entire) demonstrate that the response of fry to flowing water depended strongly on the life-history form (ecotype) of the source population, and that this behavior has a genetic basis. However, behavioral responses also were mediated by environmental conditions (light—Kaya 1991, pp. 56–57; light and water temperature—Kaya 1989, pp. 477–479), and some progeny of each ecotype exhibited behavior characteristic of the other; for example some individuals from the fluvial ecotype moved downstream rather than holding position, and some individuals from an inlet-spawning adfluvial ecotype held position or moved upstream (Kaya 1991, p. 58). These observations indicate that some plasticity for behavior exists, at least for very young Arctic grayling.

However, the ability of one ecotype of Arctic grayling to give rise to a functional population of the other ecotype within a few decades is much less certain, and may parallel the differences in plasticity that have evolved between river- and lake-type European grayling (Salonen 2005, entire). Circumstantial support for reduced plasticity in adfluvial Arctic grayling comes from observations that adfluvial fish stocked in river habitats almost never establish populations (Kaya 1990, pp. 31–34). In contrast, a population of Arctic grayling in the Madison River that would have presumably expressed a fluvial ecotype under historical conditions has apparently adapted to an adfluvial life-history after construction of an impassible dam, which impounded Ennis Reservoir (Kaya 1992, p. 53; Jeanes 1996, pp. 54). We note that adfluvial Arctic grayling retain some life-history flexibility—at least in lake environments—as naturalized populations derived from inlet-spawning stocks have established outlet-spawning demes (a deme is a local populations that shares a distinct gene pool) in Montana and in Yellowstone National Park (Kruse 1959, p. 318; Kaya 1989, p. 480). While in some cases Arctic grayling may be able to adapt or adjust rapidly to a new environment, the frequent failure of introductions of Arctic grayling suggest a cautionary approach to the loss of particular life-history forms is warranted. Healey and Prince (1995, entire) reviewed patterns of genotypic and phenotypic variation in Pacific salmon and warn that recovery of lost life-history forms may not follow directly from conservation of the genotype (p. 181), and reason that the critical conservation unit is the population within its habitat (p. 181).

Age and Growth

Age at maturity and longevity in Arctic grayling varies regionally and is probably related to growth rate, with populations in colder, northern latitudes maturing at later ages and having a greater lifespan (Kruse 1959, pp. 340–341; Northcote 1995 and references therein, pp. 155–157). Arctic grayling in the upper Missouri River typically mature at age 2 (males) or age 3 (females), and individuals greater than age 6 are rare (Kaya 1990, p. 18; Magee and Lamothe 2003, pp. 16–17). Similarly, Nelson (1954, pp. 333–334) observed that the majority of the Arctic grayling spawning in two tributaries in the Red Rock Lakes system, Montana, were age 3, and the oldest individuals aged from a larger sample were age 6. Mogen (1996, pp. 32–34) found that Arctic grayling spawning in Red Rock Creek were mostly ages 2 to 5, but he did encounter some individuals age 7.

Generally, growth rates of Arctic grayling are greatest during the first years of life then slow dramatically after maturity. Within that general pattern, there is substantial variation among populations from different regions. Arctic grayling populations in Montana (Big Hole River and Red Rock Lakes) appear to have very high growth rates relative to those from British Columbia, Asia, and the interior and North Slope of Alaska (Carl *et al.* 1992, p. 240; Northcote 1995, pp. 155–157; Neyme 2005, p. 28). Growth rates of Arctic grayling from different management areas in Alberta are nearly as high as those observed in Montana grayling (ASRD 2005, p. 4).

Distinct Population Segment

In its stipulated settlement with Plaintiffs, the Service agreed to consider the appropriateness of DPS designations for Arctic grayling populations in the upper Missouri River basin that included: (a) All life ecotypes or histories, (b) the fluvial ecotype, and (c) the adfluvial ecotype. The fluvial ecotype has been the primary focus of past Service action and litigation, but the Service also has alluded to the possibility of alternative DPS designations in previous candidate species assessments (USFWS 2005, p. 11). Since the 2007 finding (72 FR 20305), additional research has been conducted and new information on the genetics of Arctic grayling is available. This finding contains a more comprehensive and robust distinct population segment analysis than the 2007 finding.

Distinct Population Segment Analysis for Native Arctic Graying in the Upper Missouri River

Discreteness

The discreteness standard under the Service's and National Oceanic and Atmospheric Administration's (NOAA) joint Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722) requires an entity to be adequately defined and described in some way that distinguishes it from other representatives of its species. A segment is discrete if it is: (1) Markedly separated from other populations of the same taxon as consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) delimited by international

governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

Arctic grayling native to the upper Missouri River are isolated from populations of the species inhabiting the Arctic Ocean, Hudson Bay, and north Pacific Ocean drainages in Asia and North America (see Figure 1). Arctic grayling native to the upper Missouri River occur as a disjunct group of populations approximately 800 km (500 mi) to the south of the next-nearest Arctic grayling population in central Alberta, Canada. Missouri River Arctic grayling have been isolated from other populations for at least 10,000 years based on historical reconstruction of river flows at or near the end of the Pleistocene (Cross *et al.* 1986, p. 375; Pileou 1991, pp. 10–11;). Genetic data confirm Arctic grayling in the Missouri River basin have been reproductively isolated from populations to the north for millennia (Everett 1986, pp. 79–80; Redenbach and Taylor 1999, p. 23; Stamford and Taylor 2004, p. 1538; Peterson and Ardren 2009, pp. 1764–1766; USFWS, unpublished data). Consequently, we conclude that Arctic grayling native to the upper Missouri River are markedly separated from other native populations of the taxon as a result of physical factors (isolation), and therefore meet the first criterion of discreteness under the DPS policy. As a result, Arctic grayling native to the upper Missouri River are considered a discrete population according to the DPS policy. Because the entity meets the first criterion (markedly separated), an evaluation with respect to the second criterion (international boundaries) is not needed.

Significance

If we determine that a population meets the DPS discreteness element, we then consider whether it also meets the DPS significance element. The DPS policy states that, if a population segment is considered discrete under one or more of the discreteness criteria, its biological and ecological significance will be considered in light of congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity (see U.S. Congress 1979, Senate Report 151, 96th Congress, 1st Session). In making this determination, we consider available scientific evidence of the discrete population's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy does provide four possible reasons why a discrete population may be significant. As specified in the DPS policy, this consideration of significance may include, but is not limited to, the following: (1) Persistence of the discrete population segment in a unique or unusual ecological setting; (2) evidence that loss of the discrete segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside of its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Unique Ecological Setting

Water temperature is a key factor influencing the ecology and physiology of ectothermic (body temperature regulated by ambient environmental conditions) salmonid fishes, and can dictate reproductive timing, growth and development, and life-history strategies. Groundwater temperatures can be related to air temperatures (Meisner 1990, p. 282), and thus reflect the regional climatic conditions. Warmer groundwater influences ecological factors such as food availability, the efficiency with which food is converted into energy for growth and reproduction, and ultimately growth rates of aquatic organisms (Allan 1995, pp. 73–79). Aquifer structure and groundwater temperature is important to salmonid fishes because groundwater can strongly influence stream temperature, and consequently egg incubation and fry growth rates, which are strongly temperature-dependent (Coutant 1999, pp. 32–52; Quinn 2005, pp. 143–150).

Missouri River Arctic grayling occur within the 4 to 7 °C (39 to 45 °F) ground water isotherm (see Heath 1983, p. 71; an isotherm is a line connecting bands of similar temperatures on the earth's surface), whereas most other North American grayling are found in isotherms less than 4 °C, and much of the species' range is found in areas with discontinuous or continuous permafrost (Meisner *et al.* 1988, p. 5). Much of the historical range of Arctic grayling in the upper Missouri River is encompassed by mean annual air temperature isotherms of 5 to 10 °C (41 to 50 °F) (USGS 2009), with the colder areas being in the headwaters of the Madison River in Yellowstone National Park. In contrast, Arctic grayling in Canada, Alaska, and Asia are located in regions encompassed by air temperature isotherms 5 °C and colder (41 °F and colder), with much of the species distributed within the 0 to -10 °C isolines (32 to 14 °F). This difference is significant because Arctic grayling in the Missouri River basin have evolved in isolation for millennia in a generally warmer climate than other populations. The potential for thermal adaptations makes Missouri River Arctic grayling a significant biological resource for the species under expected climate change scenarios.

TABLE 3. DIFFERENCES BETWEEN THE ECOLOGICAL SETTING OF THE UPPER MISSOURI RIVER AND ELSEWHERE IN THE SPECIES' RANGE OF ARCTIC GRAYLING.

Ecological Setting Variable	Missouri River	Rest of Taxon
Ocean watershed	Gulf of Mexico–Atlantic Ocean	Hudson Bay, Arctic Ocean, or north Pacific
Bailey's Ecoregion	Dry Domain: Temperate Steppe	Polar Domain: Tundra & Subarctic Humid Temperate: Marine, Prairie, Warm Continental Mountains
Air temperature (isotherm)	5 to 10 °C (41 to 50 °F)	-15 to 5 °C (5 to 41 °F)

TABLE 3. DIFFERENCES BETWEEN THE ECOLOGICAL SETTING OF THE UPPER MISSOURI RIVER AND ELSEWHERE IN THE SPECIES' RANGE OF ARCTIC GRAYLING.—Continued

Ecological Setting Variable	Missouri River	Rest of Taxon
Groundwater temperature (isotherm)	4 to 7°C (39 to 45 °F)	Less than 4 °C (less than 39 °F)
Native occurrence of large-bodied fish predators on salmonids	None, in most of the range[a]	Bull trout, lake trout, northern pike, taimen

[a]Lake trout are native to two small lakes in the upper Missouri River basin (Twin Lakes and Elk Lake), where their distributions presumably overlapped with the native range of Arctic grayling, so they would not have interacted with most Arctic grayling populations in the basin that were found in rivers.

Arctic grayling in the upper Missouri River basin occur in a temperate ecoregion distinct from all other Arctic grayling populations worldwide, which occur in Arctic or sub-Arctic ecoregions dominated by Arctic flora and fauna. An ecoregion is a continuous geographic area within which there are associations of interacting biotic and abiotic features (Bailey 2005, pp. S14, S23). These ecoregions delimit large areas within which local ecosystems recur more or less in a predictable fashion on similar sites (Bailey 2005, p. S14). Ecoregional classification is hierarchical, and based on the study of spatial coincidences, patterning, and relationships of climate, vegetation, soil, and landform (Bailey 2005, p. S23). The largest ecoregion categories are domains, which represent subcontinental areas of similar climate (e.g., polar, humid temperate, dry, and humid tropical) (Bailey 1994; 2005, p. S17). Domains are divided into divisions that contain areas of similar vegetation and regional climates. Arctic grayling in the upper Missouri River basin are the only example of the species naturally occurring in a dry domain (temperate steppe division; see Table 3 above). The vast majority of the species' range is found in the polar domain (all of Asia, most of North America), with small portions of the range occurring in the humid temperate domain (northern British Columbia and southeast Alaska). Occupancy of Missouri River Arctic grayling in a temperate ecoregion is significant for two primary reasons. First, an ecoregion represents a suite of factors (climate, vegetation, landform) influencing, or potentially influencing, the evolution of species within that ecoregion. Since Missouri River Arctic grayling have existed for thousands of years in an ecoregion quite different from the majority of the taxon, they have likely developed adaptations during these evolutionary timescales that distinguish them from the rest of the taxon, even if we have yet to conduct the proper studies to measure these adaptations. Second, the occurrence of Missouri River Arctic grayling in a unique ecoregion helps reduce the risk of species-level extinction, as the different regions may respond differently to environmental change.

Arctic grayling in the upper Missouri River basin have existed for at least 10,000 years in an ecological setting quite different from that experienced by Arctic grayling elsewhere in the species' range. The most salient aspects of this different setting relate to temperature and climate, which can strongly and directly influence the biology of ectothermic species (like Arctic grayling). Arctic grayling in the upper Missouri River have experienced warmer temperatures than most other populations. Physiological and life-history adaptation to local temperature regimes are regularly documented in salmonid fishes (Taylor 1991, pp. 191–193), but experimental evidence for adaptations to temperature, such as unusually high temperature tolerance or lower tolerance to colder temperatures, is lacking for Missouri River Arctic grayling because the appropriate studies have not been conducted. Lohr *et al.* (1996, p. 934) studied the upper thermal tolerances of Arctic grayling from the Big Hole River, but their research design did not include other populations from different thermal regimes, so it was not possible to make between-population contrasts under a common set of conditions. Arctic grayling from the upper Missouri River demonstrate very high growth rates relative to other populations (Northcote 1995, p. 157). Experimental evidence obtained by growing fish from populations under similar conditions would be needed to measure the relative influence of genetics (local adaptation) versus environment.

An apex fish predator that preys successfully on salmonids has been largely absent from most of the upper Missouri River basin over evolutionary time scales (tens of thousands of years). This suggests that Arctic grayling in the upper Missouri River basin have faced a different selective pressure than Arctic grayling in many other areas of the species' range, at least with respect to predation by fishes. Predators can exert a strong selective pressure on populations. One noteworthy aspect of the aquatic biota experienced by Arctic grayling in the upper Missouri River is the apparent absence of a large-bodied fish that would be an effective predator on juvenile and adult salmonids. In contrast, one or more species of large predatory fishes like northern pike (*Esox lucius*), bull trout, taimen (*Hucho taimen*), and lake trout (*Salvelinus namaycush*) are broadly distributed across much of the range of Arctic grayling in Canada and Asia (Northern pike—Scott and Crossman 1998, pp. 302, 358; taimen—VanderZanden *et al.* 2007, pp. 2281–2282; Esteve *et al.* 2009, p. 185; bull trout—Behnke 2002, pp. 296, 330; lake trout —Behnke 2002, pp. 296, 330). The only exceptions to this general pattern are where Arctic grayling formerly coexisted with lake trout native to Twin Lakes and Elk Lake (Beaverhead County) (Vincent 1963, pp. 188–189), but both of these Arctic grayling populations are thought to be extirpated (Oswald 2000, pp. 10, 16; Oswald 2006, pers. comm.). The burbot (*Lota lota*) is a freshwater fish belonging to the cod family and is native to the Missouri, Big Hole, Beaverhead, Ruby, and Madison Rivers in Montana (MFISH 2010); thus its distribution significantly overlapped the historical and current ranges of Arctic grayling in the upper Missouri River system. Burbot are voracious predators, but tend to be benthic (bottom-oriented) and apparently prefer the deeper portions of larger rivers and lakes. A few studies have investigated the diet of burbot where they overlap with native Arctic grayling in Montana, but did not detect any predation on Arctic grayling (Streu 1990, pp. 16–20; Katzman 1998, pp. 98–100). Burbot apparently do not consume salmonids in significant amounts, even when they are very abundant (Katzman 1998 and references therein, p. 106). The response of Arctic grayling in the Missouri River basin to introduced,

nonnative trout suggests they were not generally pre-adapted to cope with the presence of a large-bodied salmonid predator. Missouri River Arctic grayling lack a co-evolutionary history with brown trout, and there are repeated observations that the two species tend not to coexist and that brown trout displace Arctic grayling (Kaya 1992, p. 56; 2000, pp. 14–15). We caution that competition with and predation by brown trout has not been directly studied with Arctic grayling, but at least some circumstantial evidence indicates that Missouri River Arctic grayling may not coexist well with brown trout.

We conclude that the occurrence of Arctic grayling in the upper Missouri River is biogeographically important to the species, that grayling there have occupied a distinctly different ecological setting relative to the rest of the species (see Table 3 above), and that they have been on a different evolutionary trajectory for at least 10,000 years. Consequently, we believe that Arctic grayling in the upper Missouri River occupy a unique ecological setting. The role that this unique setting plays in influencing adaptations or determining unique traits is unclear, and therefore a determination of the significance of this ecological setting to the taxon is unknown.

Gap in the Range

Arctic grayling in the upper Missouri River basin occur in an ocean drainage basin that is distinct from all other Arctic grayling populations worldwide. All other Arctic grayling occur in drainages of Hudson Bay, the Arctic Ocean, or the north Pacific Ocean; the Missouri River is part of the Gulf of Mexico–Atlantic Ocean drainage. The significance of occupancy of this drainage basin is that the upper Missouri River basin represents an important part of the species' range from a biogeographic perspective. The only other population of Arctic grayling to live in a non-Arctic environment was the Michigan–Great Lakes population that was extirpated in the 1930s.

Arctic grayling in Montana (southern extent is approximately 44°36′23″ N latitude) represent the southern-most extant population of the species' distribution since the Pleistocene glaciation (Figure 1). The next-closest native Arctic grayling population outside the Missouri River basin is found in the Pembina River (approximately 52°55′6.77″ N latitude) in central Alberta, Canada, west of Edmonton (Blackburn and Johnson 2004, pp. ii, 17; ASRD 2005, p. 6). Loss of the native Arctic grayling of the upper Missouri River would shift the southern distribution of Arctic grayling by more than 8° latitude. Such a dramatic range constriction would constitute a significant geographic gap in the species' range, and eliminate a genetically distinct group of Arctic grayling, which may limit the species' ability to cope with future environmental change.

Marginal populations, defined as those on the periphery of the species' range, are believed to have high conservation significance (see reviews by Scudder 1989, entire; Lesica and Allendorf 1995, entire; Fraser 2000, entire). Peripheral populations may occur in suboptimal habitats and thus be subjected to very strong selective pressures (Fraser 2000, p. 50). Consequently, individuals from these populations may contain adaptations that may be important to the taxon in the future. Lomolino and Channell (1998, p. 482) hypothesize that because peripheral populations should be adapted to a greater variety of environmental conditions, then they may be better suited to deal with anthropogenic (human-caused) disturbances than populations in the central part of a species' range. Arctic grayling in the upper Missouri River have, for millennia, existed in a climate warmer than that experienced by the rest of the taxon. If this selective pressure has resulted in adaptations to cope with increased water temperatures, then the population segment may contain genetic resources important to the taxon. For example, if northern populations of Arctic grayling are less suited to cope with increased water temperatures expected under climate warming, then Missouri River Arctic grayling might represent an important population for reintroduction in those northern regions. We believe that Arctic grayling from the upper Missouri River's occurrence at the southernmost extreme of the range contributes to its significance that may increased adaptability and contribute to the resilience of the overall taxon.

Only Surviving Natural Occurrence of the Taxon that May be More Abundant Elsewhere as an Introduced Population Outside of its Historical Range

This criterion does not directly apply to the Arctic grayling in the upper Missouri River because it is not the only surviving natural occurrence of the taxon; there are native Arctic grayling populations in Canada, Alaska, and Asia. That said, there are introduced Lake Dwelling Arctic Grayling within the native range in the Upper Missouri River System and Arctic grayling have been established in lakes outside their native range in Arizona, Colorado, Idaho, Montana, New Mexico, Utah, Washington, and Wyoming (Vincent 1962, p. 15; Montana Fisheries Information System (MFISH) 2009; NatureServe 2010).

Differs Markedly in Its Genetic Characteristics

Differences in genetic characteristics can be measured at the molecular genetic or phenotypic level. Three different types of molecular markers (allozymes, mtDNA, and microsatellites) demonstrate that Arctic grayling from the upper Missouri River are genetically different from those in Canada, Alaska, and Asia (Everett 1986, pp. 79–80; Redenbach and Taylor 1999, p. 23; Stamford and Taylor 2004, p. 1538; Peterson and Ardren 2009, pp. 1764–1766; USFWS, unpublished data). These data confirm the reproductive isolation among populations that establishes the discreteness of Missouri River Arctic grayling under the DPS policy. Here, we speak to whether these data also establish significance.

Allozymes

Using allozyme electrophoretic data, Everett (1986, entire) found marked genetic differences among Arctic grayling collected from the Chena River in Alaska, those descended from fish native to the Athabasca River drainage in the Northwest Territories, Canada, and native upper Missouri River drainage populations or populations descended from them (see Leary 2005, pp. 1–2). The Canadian population had a high frequency of a unique isocitrate dehydrogenase allele (form of a gene) and a unique malate dehydrogenase allele, which strongly differentiated them from all the other samples (Everett 1986, p. 44). With the exception one introduced population in Montana that is believed to have experienced extreme genetic bottlenecks, the Chena River (Alaskan) fish were highly divergent from all the other samples as they possessed an unusually low frequency of superoxide dismutase (Everett 1986, p. 60; Leary 2005, p. 1), and contained a unique variant of the malate dehydrogenase (Leary 2005, p. 1). Overall, each of the four native Missouri River populations examined (Big Hole, Miner, Mussigbrod, and Red Rock) exhibited statistically significant differences in allele frequencies relative to both the Chena River (Alaska) and Athabasca River (Canada) populations (Everett 1986, pp. 15, 67).

Combining the data of Everett (1986, entire), Hop and Gharrett (1989, entire), and Leary (1990, entire) results in

information from 21 allozyme loci (genes) from the five native upper Missouri River drainage populations, five native populations in the Yukon River drainage in Alaska, and the one population descended from the Athabasca River drainage in Canada (Leary 2005, pp. 1–2). Examination of the genetic variation in these samples indicated that most of the genetic divergence is due to differences among drainages (29 percent) and comparatively little (5 percent) results from differences among populations within a drainage (Leary 2005, p. 1).

Mitochondrial DNA

Analysis using mtDNA suggest that Arctic grayling in North America represent at least three evolutionary lineages that are associated with distinct glacial refugia (Redenbach and Taylor 1999, entire; Stamford and Taylor 2004, entire). Arctic grayling in the Missouri River basin belong to the so-called North Beringia lineage (Redenbach and Taylor 1999, pp. 27–28; Samford and Taylor 2004, pp. 1538–1540). Analysis of Arctic grayling using restriction enzymes and DNA sequencing indicated that the fish from the upper Missouri River drainage possessed, in terms of North American fish, an ancestral form of the molecule (different forms of mtDNA molecules are referred to as haplotypes) that was generally absent from populations collected from other locations within the species' range in North America (Redenbach and Taylor 1999, pp. 27–28; Stamford and Taylor 2004, p. 1538). The notable exceptions were that some fish from the lower Peace River drainage in British Columbia, Canada (2 of 24 individuals in the population), and all sampled individuals from the Saskatchewan River drainage Saskatchewan, Canada (a total of 30 individuals from 2 populations), also possessed this haplotype (Stamford and Taylor 2004, p. 1538).

Variation in mtDNA haplotypes based on sequencing a portion of the 'control region' of the mtDNA molecule of Arctic grayling from 26 different populations seems to support the groupings proposed by Stamford and Taylor (2004, entire) (USFWS unpublished data). Two haplotypes were common in the five native Missouri River populations (Big Hole, Red Rock, Madison, Miner, and Mussigbrod – total sample size 143 individuals; USFWS unpublished data). Fish from three populations in Saskatchewan or near Hudson's Bay also had one of these Missouri River haplotypes at very high frequency (50 of 51 individuals sequenced had the same haplotype; USFWS unpublished data). The two "common" Missouri River haplotypes also occurred at low frequency in handful of other populations elsewhere in Canada and Alaska. For example, there a total of five such populations where a few individuals contained had one or the other of the two common Missouri River haplotypes (25 of 107 individuals sequenced; USFWS unpublished data). Also similar to the earlier study by Stamford and Taylor (2004, entire), a few individuals (9 of 40 individuals) from two populations from the Lower Peace River and the Upper Yukon River also had one or the other of the two common Missouri River haplotypes (USFWS unpublished data).

The distribution of the common Missouri River haplotype compared to others suggested that Arctic grayling native to the upper Missouri River drainage probably originated from a glacial refuge in the drainage and subsequently migrated northwards when the Missouri River temporarily flowed into the Saskatchewan River and was linked to an Arctic drainage (Cross *et al.* 1986, pp. 374–375; Pielou 1991, p. 195). When the Missouri River began to flow southwards because of the advance of the Laurentide ice sheet (Cross *et al.* 1986, p. 375; Pileou 1991, p. 10), the Arctic grayling in the drainage became physically and reproductively isolated from the rest of the species' range (Leary 2005, p. 2; Campton 2006, p. 6), which would have included those populations in Saskatchewan. Alternatively, the Missouri River Arctic grayling could have potentially colonized Saskatchewan or the Lower Peace River (in British Columbia) or both post-glacially (Stamford 2001, p. 49) via a gap in the Cordilleran and Laurentide ice sheets (Pielou 1991, pp. 10–11), which also might explain the low frequency of one or the other of the 'Missouri River' haplotypes in grayling in the Lower Peace River and Upper Yukon River.

We do not interpret the observation that Arctic grayling in Montana and Saskatchewan, and to lesser extent those from the Lower Peace and Upper Yukon River systems, share a mtDNA haplotype to mean that these groups of fish are genetically identical. Rather, we interpret it to mean that these fish shared a common ancestor tens to hundreds of thousands of years ago.

Microsatellite DNA

Recent analysis of microsatellite DNA (highly variable portions of nuclear DNA that exhibit tandem repeats of DNA base pairs) that included samples from five native Missouri River populations and two from Saskatchewan showed substantial divergence between these groups (Peterson and Ardren 2009, entire). Genetic differentiation between sample populations can be compared in terms of the genetic variation within relative to among populations, measured in terms of allele frequencies, a metric called F_{st} (Allendorf and Luikart 2007, pp. 52–54, 198–199). An analogous metric, named R_{st}, also measures genetic differentiation between populations based on microsatellite DNA, but differs from F_{st} in that it also considers the size differences between alleles (Hardy *et al.* 2003, p. 1468). An F_{st} or R_{st} of 0 indicates that populations are the same genetically (all genetic diversity within a species is shared by all populations), whereas a value of 1 indicates the populations are completely different (all the genetic diversity within a species is found as fixed differences among populations). F_{st} values ranged from 0.13 to 0.31 (average 0.18) between Missouri River and Saskatchewan populations (Peterson and Ardren 2009, pp. 1758, 1764–1765), whereas R_{st} values ranged from 0.47 to 0.71 (average 0.54) for the same comparisons (Peterson and Ardren 2009, pp. 1758, 1764–1765). This indicates that the two groups (Missouri vs. Saskatchewan populations) differ significantly in allele frequency and also in the size differences, and therefore divergence, among those alleles. This indicates that the observed genetic differences are not simply due to random loss of genetic variation because the populations are isolated (genetic drift), but they also are due to mutational differences, which suggests the groups may have been separated for millennia (Peterson and Ardren 2009, pp. 1767–1768).

Comparison of 435 individuals from 21 Arctic grayling populations from Alaska, Canada, and the Missouri River basin using nine of the same microsatellite loci as Peterson and Ardren (2009, entire) further supports the distinction of Missouri River Arctic grayling relative to populations elsewhere in North America (USFWS, unpublished data). A statistical analysis that determines the likelihood that an individual fish belongs to a particular group (e.g., STRUCTURE) (Pritchard *et al.* 2000, entire), clearly separated the sample fish from 21 populations into two clusters: one cluster representing populations from the upper Missouri River basin, and another cluster representing populations from across Canada and Alaska (USFWS, unpublished data). Factorial correspondence analysis (FCA) plots of individual fish also separated the fish

into two groups, or clouds of data points when visualized in a three-dimensional space (USFWS, unpublished data). The FCA is a multivariate data analysis technique used to simplify presentation of complex data and to identify systematic relations between variables, in this case the multi-locus genotypes of Arctic grayling. As with the other analysis, the FCA plots clearly distinguished Missouri River Arctic grayling from those native to Canada and Alaska (USFWS, unpublished data). Divergence in size among these alleles further supports the distinction between Missouri River grayling from those in Canada and Alaska (USFWS, unpublished data). The interpretation of these data is that the Missouri River populations and the Canada/Alaska populations are most genetically distinct at the microsatellite loci considered.

Phenotypic Characteristics Influenced by Genetics—Meristics

Phenotypic variation can be evaluated by counts of body parts (i.e., meristic counts of the number of gill rakers, fin rays, and vertebrae characteristics of a population) that can vary within and among species. These meristic traits are influenced by both genetics and the environment (Allendorf and Luikart 2007, pp. 258–259). When the traits are controlled primarily by genetic factors, then meristic characteristics can indicate significant genetic differences among groups. Arctic grayling north of the Brooks Range in Alaska and in northern Canada had lower lateral line scale counts than those in southern Alaska and Canada (McCart and Pepper 1971, entire). These two scale-size phenotypes are thought to correspond to fish from the North and South Beringia glacial refuges, respectively (Stamford and Taylor 2004, p. 1545). Arctic grayling from the Red Rock Lakes drainage had a phenotype intermediate to the large- and small-scale types (McCart and Pepper 1971, pp. 749, 754). Arctic grayling populations from the Missouri River (and one each from Canada and Alaska) could be correctly assigned to their group 60 percent of the time using a suite of seven meristic traits (Everett 1986, pp. 32–35). Those native Missouri River populations that had high genetic similarity also tended to have similar meristic characteristics (Everett 1986, pp. 80, 83).

Arctic grayling from the Big Hole River showed marked differences in meristic characteristics relative to two populations from Siberia, and were correctly assigned to their population of origin 100 percent of the time (Weiss *et al.* 2006, pp. 512, 515–516, 518). The populations that were significantly different in terms of their meristic characteristics also exhibited differences in molecular genetic markers (Weiss *et al.* 2006, p. 518).

Inference Concerning Genetic Differences in Arctic Grayling of the Missouri River Relative to Other Examples of the Taxon

We believe the differences between Arctic grayling in the Missouri River and sample populations from Alaska and Canada measured using microsatellite DNA markers (Peterson and Ardren 2009, pp. 1764–1766; USFWS, unpublished data) represent "marked genetic differences" in terms of the extent of differentiation (e.g., F_{st}, R_{st}) and the importance of that genetic legacy to the rest of the taxon. The presence of morphological characteristics separating Missouri River Arctic grayling from other populations also likely indicates genetic differences, although this conclusion is based on a limited number of populations (Everett 1986, pp. 32–35; Weiss *et al.* 2006, entire), and we cannot entirely rule out the influence of environmental variation.

The intent of the DPS policy and the ESA is to preserve important elements of biological and genetic diversity, not necessarily to preserve the occurrence of unique alleles in particular populations. In Arctic grayling of the Missouri River, the microsatellite DNA data indicate that the group is evolving independently from the rest of the species. The extirpation of this group would mean the loss of the genetic variation in one of the two most distinct groups identified in the microsatellite DNA analysis, and the loss of the future evolutionary potential that goes with it. Thus, the genetic data support the conclusion that Arctic grayling of the upper Missouri River represent a unique and irreplaceable biological resource of the type the ESA was intended to preserve. Thus, we conclude that Missouri River Arctic grayling differ markedly in their genetic characteristics relative to the rest of the taxon.

Conclusion

We find that a population segment that includes all native ecotypes of Arctic grayling in the upper Missouri River basin satisfies the discreteness standard of the DPS policy. The segment is physically isolated, and genetic data indicates that Arctic grayling in the Missouri River basin have been separated from other populations for thousands of years. The population segment occurs in an ocean drainage different from all other Arctic grayling populations worldwide, and we find that loss of this population segment would create a significant gap in the species' range. Molecular genetic data clearly differentiate Missouri River Arctic grayling from other Arctic grayling populations, including those in Canada and Alaska. We conclude that because Arctic grayling of the upper Missouri River basin satisfy the criteria for being discrete and significant under our DPS policy, we determined that this population constitutes a DPS under our policy and the Act.

In our stipulated settlement agreement, we also agreed to consider the appropriateness of distinct population segments based on the two different ecotypes (fluvial and adfluvial) expressed by native Arctic grayling of the upper Missouri River. We acknowledge there are cases where the Service has designated distinct population segments primarily on life-history even when they co-occur with another ecotype that can be part of the same gene pool (e.g., anadromous steelhead and resident rainbow trout, *Oncorhynchus mykiss* (71 FR 838, January 5, 2006). However, we conclude that designation of a single population segment for Arctic grayling in the upper Missouri River is more appropriate than designating two separate distinct population segments delineated by life-history type. In the Missouri River basin, the two ecotypes share a common evolutionary history, and do not cluster genetically based strictly on ecotype. As we discussed above, the fluvial and adfluvial life-history forms of Arctic grayling in the upper Missouri River do not appear to represent distinct evolutionary lineages. There appears to be some plasticity in behavior where individuals from a population can exhibit a range of behaviors. From a practical standpoint, we observe that only five native Arctic grayling populations remain in the Missouri River basin, and we believe that both fluvial and adfluvial native ecotypes have a role in the conservation of the larger population segment. We believe that the intent of the ESA and the DPS policy, and our obligation to assess the appropriateness of alternate DPS designations in the settlement agreement are best served by designating a single distinct population segment, rather than multiple population segments.

As we described above, we are not including introduced populations that occur in lakes in the Upper Missouri River basin in the DPS. The Service has interpreted the Act to provide a statutory directive to conserve species in their native ecosystems (49 FR 33890,

August 27, 1984) and to conserve genetic resources and biodiversity over a representative portion of a taxon's historical occurrence (61 FR 4723, February 7, 1996). The introduced Arctic grayling occur in lakes apart from native fluvial environments and from lakes where native adfluvial grayling occur. These introduced populations have not been used for any conservation purpose and could pose genetic risks to the native Arctic grayling population.

We find that the Arctic grayling of the upper Missouri River basin constitute a distinct population segment. We define the historical range of this population segment to include the major streams, lakes, and tributary streams of the upper Missouri River (mainstem Missouri, Smith, Sun, Beaverhead, Jefferson, Big Hole, and Madison Rivers, as well as their key tributaries, as well as a few small lakes where Arctic grayling are or were believed to be native (Elk Lake, Red Rock Lakes, Miner Lake, and Mussigbrod Lake, all in Beaverhead County, Montana). We define the current range of the DPS to consist of extant native populations in the Big Hole River, Miner Lake, Mussigbrod Lake, Madison River–Ennis Reservoir, and Red Rock Lakes. We refer to this DPS as the native Arctic grayling of the upper Missouri River. The remainder of this finding will thus focus on the population status of and threats to this entity.

Population Status and Trends for Native Arctic Grayling in the Upper Missouri River

We identified a DPS for Arctic grayling in the upper Missouri River basin that includes five extant populations: (1) Big Hole River, (2) Miner Lake, (3) Mussigbrod Lake, (4) Madison River-Ennis Reservoir, and (5) Red Rock Lakes. In general, we summarize what is known about the historical distribution and abundance of each of these populations, describe their current distributional extent, summarize any available population monitoring data, identify the best available information that we use to infer the current population status, and summarize the current population status and trends.

TABLE 4. EXTENT AND CURRENT ESTIMATED EFFECTIVE POPULATION SIZES (N_e) OF NATIVE ARCTIC GRAYLING POPULATIONS IN THE MISSOURI RIVER BASIN. VALUES IN PARENTHESES REPRESENT 95 PERCENT CONFIDENCE INTERVALS.

				Estimated Adult Population Size Assuming:	
Population Name	Population Extent[a]	N_e [b]	Biological Date of Population Size [c]	N_e/N ratio 0.25 [d]	N_e/N ratio 0.14 [e]
Big Hole River	158 mi	208 (176 to 251)	2000–2003	828 (704 to 1,004)	1,486 (1,257 to 1,793)
Miner Lakes	26.9 ha	286 (143 to 4,692)	2001–2003	1,144 (572 to 18,768)	2,043 (1,021 to 33,514)
Mussigbrod Lake	42.5 ha	1,497 (262 to ∞)	2001–2003	5,988 (1,048 to ∞)	10,693 (1,871 to ∞)
Madison River–Ennis Reservoir	1,469 ha	162 (76 to ∞)	1991–1993	648 (304 to ∞)	1,157 (543 to ∞)
Red Rock Lakes	890 ha	228 (141 to 547)	2000–2002	912 (564 to 2,188)	1,629 (1,007 to 3,907)

[a] Approximate maximum spatial extent over which Arctic grayling are encountered in a given water.

[b] Effective population size estimates from Peterson and Ardren (2009, p.1767). Confidence intervals that include infinity (∞) can result from statistical artifacts of the linkage disequilibrium method (Waples and Do 2007, p. 10; Russell and Fewster 2009, pp. 309–310). The usual interpretation is that there is no evidence for any disequilibrium caused by genetic drift due to a finite number of parents—it can all be explained by sampling error (Waples and Do 2007, p. 10). Thus, the effective size is infinitely large. Small sample sizes may influence estimates in some cases (e.g., Madison River-Ennis Reservoir).

[c] Approximate date to which the N_e estimate refers. For example, N_e for the Big Hole River based on genotyping a sample of fish from 2005–2006, but the interpretation of N_e is the number of breeding adults that produced the fish in the observed sample. Thus the true biological date of the N_e estimate is one generation before 2005–2006, or approximately 2000–2003.

[d] Adult population size estimated from N_e assuming N_e /N = 0.25. This value was the midpoint of a range of values (0.2–0.3) commonly cited for N_e /N ratios in salmonid fishes (Allendorf *et al.* 1997, p. 143; McElhahey *et al.* 2000, p. 63; Rieman and Allendorf 2001, p. 762; Palm *et al.* 2003, p. 260).

[e] Adult population size estimated from N_e assuming N_e /N = 0.14. This value was the median N_e /N ratio based on a meta analysis of 83 studies for 65 different species (Palstra and Ruzzante 2008, p. 3428).

Big Hole River

Historically, Arctic grayling presumably had access to and were distributed throughout much of the Big Hole River, including the lower reaches of many tributary streams, such as Big Lake, Deep, Doolittle, Fishtrap, Francis, Governor, Johnson, LaMarche, Miner, Mussigbrod, Odell, Pintlar, Rock, Sand Hollow, Swamp, Seymour, Steel, Swamp, and Wyman Creeks, as well as the Wise River (Liknes 1981, p. 11; Liknes and Gould 1987, p. 124; Kaya 1990, pp. 36–40). Presently, Arctic grayling are found primarily in the mainstem Big Hole River between the towns of Glen and Jackson, Montana, a distance of approximately 181 river km (113 mi), and in 11 tributaries, totaling an additional 72 river km (45 mi) (Magee 2010a, pers. comm.; see Table 4 above). The total current maximum extent of Arctic grayling occurrence in the Big Hole River is approximately 250 river km (156 mi). However, the fish are not continuously distributed across this distance, and instead tend to be concentrated in discrete patches (Magee *et al.* 2006, pp. 27–28; Rens and Magee 2007, p. 15) typically associated with spawning and rearing habitats or cold-water sites that provide a thermal refuge from high summer water temperatures.

Kaya (1992, pp. 50–52) noted the general lack of monitoring data for the Big Hole River fluvial Arctic grayling population prior to the late 1970s, but data collected since that time indicate the overall range has contracted over the last 2 decades. During 1978 and 1979 Arctic grayling were observed in Governor Creek (in the headwaters of the Big Hole River) and downstream in the Big Hole River near Melrose, Montana (Liknes 1981, p. 11). Arctic grayling have not recently been encountered in Governor Creek (Rens and Magee 2007, p. 15; Montana Fish, Wildife and Parks (MFWP), unpublished data), but are occasionally

encountered in the Big Hole River downstream of Divide, Montana, at very low densities and as far downstream as Melrose or Glen, Montana (Oswald 2005a, pers. comm.). More recently, Arctic grayling have become less abundant in historical spawning and rearing locations in the upper watershed near Wisdom, Montana, and also in downstream river segments with deep pool habitats considered important for overwintering (Magee and Lamothe 2003, pp. 18–21; MFWP unpublished data). Comparatively, greater numbers of Arctic grayling are encountered in the lower reaches of tributaries to the upper Big Hole River, including LaMarche, Fishtrap, Steel, and Swamp Creeks (Rens and Magee 2007, p. 13).

Based on the best available data, the adult population declined by one half between the early 1990s and the early 2000s (see Figure 3, USFWS unpublished data), which is equivalent to a decline of 7 percent per year, on average. Monitoring data collected by MFWP also support the conclusion that the Arctic grayling population in the Big Hole River declined during this time period (Byorth 1994a, p. 11; Rens and Magee 2007, entire; MFPW, unpublished data).

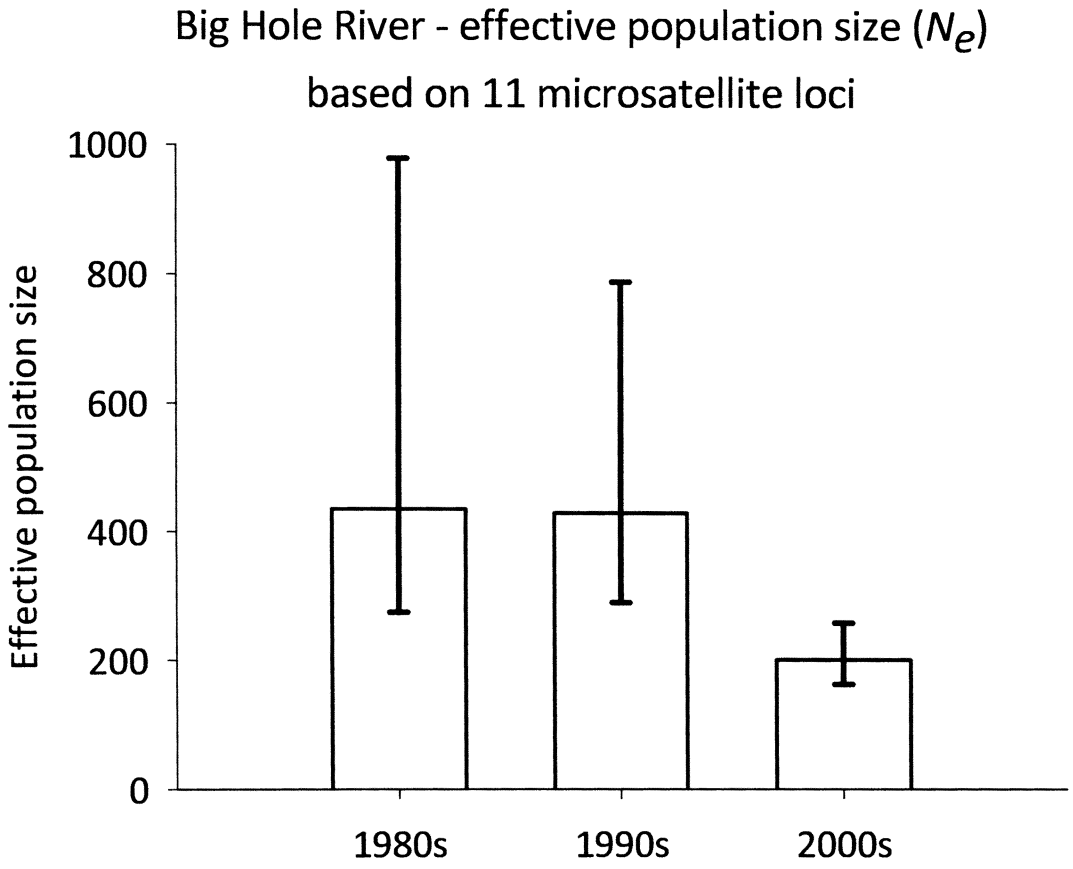

FIGURE 3. Effective population size (N_e) of Big Hole River Arctic grayling based on microsatellite DNA genotypes from fish collected in three time periods (USFWS, unpublished data). The N_e are estimated using the linkage disequilibrium method of Waples and Do (2008, entire), and error bars represent 95% confidence intervals estimated by the jackknife method.

Miner Lakes

The Miner Lakes are a complex of small lakes in the upper Big Hole River drainage. Lower Miner Lakes are two small lakes in the middle of the Miner Creek drainage connected by a narrow section approximately 100 m (330 ft) in length, functionally representing a single lake for fish populations. Arctic grayling occur in Lower Miner Lakes (hereafter Miner Lakes population), which has a total surface area of 26.7 hectares (ha) or 0.267 km^2 (66 acres (ac)). Arctic grayling primarily reside in the lake, and presumably move into the inlet or outlet tributary to spawn. Surveys conducted upstream and downstream of the Lower Miner Lakes in 1992 and 1994, respectively, captured no Arctic grayling (Downing 2006, pers. comm.). Apparently, adults do not remain in the stream long after spawning and young-of-the-year (YOY) move into Lower Miner Lakes.

The MFWP conducted limited surveys in Lower Miner Lakes, but the abundance of the population has not been estimated by traditional fishery methods. Arctic grayling are classified as "common" in Lower Miner Lakes (MFISH 2010). Introduced brook trout also are present.

The best available information on the abundance of Miner Lakes Arctic grayling comes from a genetic assessment of that population. Based on a sample of fish from 2006, Peterson and Ardren (2009, p. 1767) estimated an effective population size of 286. This estimate represents an approximation of abundance of breeding adults at a single point in time, and there are no data on which to base an assessment of the population trend.

Mussigbrod Lake

Mussigbrod Lake has a surface area of 42.5 ha (105 ac), and is found in the middle reaches of Mussigbrod Creek, a tributary to the North Fork Big Hole River. Arctic grayling primarily reside in the lake. We do not know whether Arctic grayling spawn in the inlet stream or within the lake (Magee and

Olsen 2010, pers. comm.). Arctic grayling occasionally pass over a diversion structure downstream at the outlet of Mussigbrod Lake, and become trapped in a pool that is isolated because of stream dewatering. The MFWP periodically capture grayling in this pool and return them to the lake.

Data for the Mussigbrod Lake population of Arctic grayling is minimal. The MFWP has conducted very limited surveys and the abundance of the population has not been estimated by traditional fishery methods. Genetic data indicate that Arctic grayling are comparatively abundant (see Table 4 above). Based on a sample from 2006, Peterson and Ardren (2009, p. 1767) estimated an effective size of 1,497. The best available data indicate that the Mussigbrod Lake population is comparatively large, but we have no data about the population trend.

Madison River – Ennis Reservoir

Historically, Arctic grayling were reported to be abundant in the middle and upper Madison River, but have undergone a dramatic decline in the past 100 years with the species becoming rare by the 1930s (Vincent 1962, pp. 11, 85–87). Native Arctic grayling are thought be extirpated from the upper Madison River. A major impact to fish in that area was the construction of Hebgen Dam, which flooded Horsethief Springs, a small tributary that was reportedly one of the most important streams for Arctic grayling (Vincent 1962, pp. 40–41, 128). In the middle Madison River, Arctic grayling were apparently common to plentiful in the mainstem River near Ennis, Montana, and some associated tributaries (Jack, Meadow, and O'Dell Creeks) (Vincent 1962, p. 128). In 1906, construction of Ennis Dam blocked all upstream movement of fishes, and apparently had a large negative effect on Arctic grayling. Vincent (1962) noted that "early settlers reported scooping up boxes full of grayling at the base of Ennis Dam the year after it was constructed" (p. 128), and that the species apparently became quite rare by the late 1930s (Vincent 1962, p. 85).

The current distribution of Arctic grayling in the Madison River is primarily restricted to the Ennis Reservoir and upstream into the river approximately 6.5 km (approximately 4 mi) to the Valley Garden Fishing Access Site (Byorth and Shepard 1990, p. 21). Arctic grayling are occasionally encountered in the Madison River downstream and upstream from Ennis Reservoir (Byorth and Shepard 1990, p. 25; Clancey 2004, p. 22; 2008, p. 21). Arctic grayling migrate from the reservoir into the river to spawn, then return to the reservoir (Byorth and Shepard 1990, pp. 21–22; Rens and Magee 2007, pp. 20–21). The YOY Arctic grayling spawned in the Madison River migrate downstream into Ennis Reservoir about 1 month after emergence, but while they are in the river, they are typically encountered in backwater or slackwater habitat (Jeanes 1996, pp. 31–34).

The MFWP has sporadically monitored Arctic grayling in the Madison River near Ennis Reservoir since about 1990. Despite sparse data, declining catches for both spawning adults and YOY indicate the population is less abundant now compared to the early 1990s. The highest numbers of YOY Arctic grayling were encountered in the early 1990s, and no more than two have been captured in any given year since that time. Our interpretation of this information is that Arctic grayling in the Madison River–Ennis Reservoir population have declined during the past 20 years and are presently at very low abundance.

Abundance of the Madison River–Ennis Reservoir Arctic grayling has been estimated twice. In 1990, the adult population was estimated to be 545, but the authors cautioned that the accuracy of the estimate was questionable as it was based on recapturing only. From a sample of fish collected mostly in 1996, the effective size of the population (breeding adults) was estimated as 162 (Peterson and Ardren 2009, p. 1767). The average number of Arctic grayling captured per unit effort (CPUE) declined by approximately a factor of 10 between the early 1990s and recent samples (Clancey 1998, p. 10; Clancey 2007, p.16; Clancey 2008, pp. ii, 21, A2-2; Clancey and Lohrenz 2009, pp. 30, B2; Clancey 2010a, pers. comm.; Clancey 2010b, pers. comm.). Adult Arctic grayling may currently exist at only 10 to 20 percent of the abundance observed in the early 1990s. Based on the best available data, we conclude that this Arctic grayling population has been in a decline during the past 20 years and may only consist of a few hundred adults.

Red Rocks Lakes

Arctic grayling are native to waters of the upper Beaverhead River system, including the Red Rock River drainage. During the past 50 to 100 years, both the distribution and abundance of Arctic grayling in the Centennial Valley, Beaverhead County, Montana (which contains the Red Rock River), has severely declined (Vincent 1962, pp. 115–121; Unthank 1989, pp. 13–17; Mogen 1996, pp. 2–5, 75–84). As of about 50 years ago, Arctic grayling spawned in at least 12 streams in the Centennial Valley (Mogen 1996, p. 17), but they appear to have been extirpated from all but 2 streams (Boltz 2006, p. 6). Presently, Arctic grayling spawn in two locations within the Red Rock River drainage: Odell Creek, a tributary to Lower Red Rock Lake; and Red Rock Creek, the primary tributary to Upper Red Rock Lake (Mogen 1996, pp. 47–48; Boltz 2006, p. 1). Lower and Upper Red Rock Lakes are connected by a short segment of river, and both lakes are contained within the boundaries of the Red Rock Lakes National Wildlife Refuge (NWR). The upper lake appears to be the primary rearing and overwintering habitat for Arctic grayling. Red Rock Creek is the only stream where Arctic grayling spawn in appreciable numbers (Mogen 1996, pp. 45–48). Collectively, we refer to this population as the Red Rocks Lakes Arctic grayling, and characterize it as having the adfluvial ecotype.

Arctic grayling in the Red Rock Lakes have been monitored intermittently since the 1970s. Most of that effort focused on Red Rock Creek, but periodic sampling also occurred in Odell Creek. The MFWP and the Service occasionally sampled for Arctic grayling in Odell Creek, where grayling abundance declined over the past few decades. On average, the minimum sizes of the spawning runs in Red Rock Creek since 1994 are about half of those recorded 4 decades ago (i.e., 623 vs. 308 per year) (data summarized from Mogen 1996, p. 70 and Boltz 2006, p. 7). The spawning runs into Red Rock Creek fluctuated during the 1990s and early 2000s, but about 450 or fewer adult Arctic grayling have been captured in 6 of 7 years in which weirs traps were operated. Electrofishing surveys conducted in Red Rock Creek by MFWP seem to corroborate a decline in the spawning population, as total catches decreased even as sampling effort increased (Rens and Magee 2007, pp. 16–18).

Based on a sample of fish from Red Rock Creek in 2005, Peterson and Ardren (2009, pp. 1761, 1767) estimated an effective size of 228, which is interpreted as the number of breeding adults that produced the fish sampled in 2005. The best available data indicate that the Red Rock Lakes Arctic grayling population has declined over the past 2 decades.

Population viability analysis (PVA) of native Missouri River Arctic grayling

To gauge the probability that the different native populations of Arctic grayling in the upper Missouri River

basin will go extinct from unpredictable events in the foreseeable future, we conducted a simple population viability analysis (PVA) (see Dennis *et al.* (1991, entire) in Morris and Doak 2002, pp. 85–87 for details on the PVA model and the software code to run the model). We assumed that a population with 50 or fewer adults is likely influenced by demographic stochasticity (chance variation in the fates of individuals within a given year) and genetic stochasticity (random changes in a population's genetic makeup), and would not be expected to persist long as a viable population. For the different PVA scenarios, we assume either the population has stabilized, or the estimated decline will continue at a constant rate.

We considered the probability of extinction individually by population, as populations appear to be reproductively isolated. The relative risk of extinction in the foreseeable future (30 years based on the observation that the variability in predictions for extinction risk from the PVA model increases substantially after 30 years) varies among the different populations, with the largest population, Mussigbrod Lake, having a very low probability of extinction (less than 1 percent) in the foreseeable future, even given a population decline. The other four populations have comparatively greater probabilities of extinction in the foreseeable future, with all being roughly similar in magnitude (13-55 percent across populations) when considering only stochastic (random or chance) processes. The Madison River has the greatest probability of extinction by stochastic processes (36-55 percent), followed by Big Hole (33-42 percent), Red Rocks (31-40 percent), and Miner (13-37 percent).

Overall, the PVA analyses indicate that four populations (Madison, Big Hole, Red Rocks, and Miner) appear to be at risk from chance environmental variation because of low population abundance. This is a general conclusion, and the actual risk may vary substantially among populations (USFWS unpublished data). For example, Arctic grayling in the Big Hole River population spawn in different locations, which would reduce the risk that an environmental catastrophe would simultaneously kill all breeding adults, relative to a situation where adults appear to be primarily in a single location or reach of river (e.g., Red Rocks and Madison populations).

Arctic Grayling Conservation Efforts

Native Arctic Grayling Genetic Reserves and Translocation

Given concern over the status of native Arctic grayling, the Montana Arctic Grayling Recovery Program (AGRP) was formed in 1987, to address conservation concerns for primarily the fluvial ecotype in Big Hole River, and to a lesser extent the native adflvuial population in Red Rock Lakes (Memorandum of Understanding (MOU) 2007, p. 2). The AGW was established as an ad hoc technical workgroup of the AGRP. In 1995, the AGW finalized a restoration plan that outlined an agenda of restoration tasks and research, including management actions to secure the Big Hole River population, brood stock development, and a program to re-establish four additional fluvial populations (AGW 1995, pp. 7–17).

Consequently, the State of Montana established genetic reserves of Big Hole River grayling (Leary 1991, entire), and has used the progeny from those reserves in efforts to re-establish additional fluvial populations within the historical native range in the Missouri River basin (Rens and Magee 2007, pp. 21–38). Currently, brood (genetic) reserves of Big Hole River grayling are held in two closed-basin lakes in south-central Montana (Rens and Magee 2007, p. 22). These fish are manually spawned to provide gametes for translocation efforts in Montana (Rens and Magee 2007, p. 22). Functionally, these brood reserves are hatchery populations maintained in a natural setting, and we do not consider them wild populations for the purposes of evaluating the status of native Arctic grayling in the Missouri River basin. However, they are important to recovery efforts.

For more than 13 years, MFWP has attempted to re-establish populations of fluvial Arctic grayling in various locations in the Missouri River basin, including the Ruby, Sun, Beaverhead, Missouri, Madison, Gallatin, and Jefferson Rivers (Lamothe and Magee 2004a, pp. 2, 28). A self-sustaining population has not yet been established from these reintroductions (Lamothe and Magee 2004a, p. 28; Rens and Magee 2007, pp. 35–36, 38). Recent efforts have focused more intensively on the Ruby and Sun Rivers, and have used methods that should improve reintroduction success (Rens and Magee 2007, pp. 24–36). Encouragingly, natural reproduction by Arctic grayling in the Ruby River was confirmed during fall 2009 (Magee 2010b, pp. 6–7, 22). Monitoring will continue in subsequent years to determine whether the population has become a stable and viable population, as defined by the guidance and implementation documents of the translocation programs (AGW 1995, p. 1; Memorandum of Agreement (MOA) 1996, p. 2). Consequently, we do not consider the Ruby River to represent a self-sustaining population for the purposes of evaluating the population status of Missouri River grayling in this finding. Arctic grayling presumably from previous translocations are occasionally encountered near translocation sites in other waters (Rens and Magee 2007, pp. 35–38; MFWP, unpublished data). There is no evidence that these individuals represent progeny from a re-established population, so we cannot consider them elements of a stable and viable population for the purposes of evaluating the population status of Missouri River Arctic grayling in this finding.

Big Hole River Candidate Conservation Agreement with Assurances

On August 1, 2006, the Service issued ESA section 10(a)(1)(A) enhancement of survival permit (TE-104415-0) to Montana Fish, Wildlife and Parks (MFWP) to implement a Candidate Conservation Agreement with Assurances for Arctic grayling in the upper Big Hole River (Big Hole Grayling CCAA) (MFWP *et al.* 2006, entire). This permit is valid through August 1, 2026. The goal of the Big Hole Grayling CCAA is to secure and enhance a population of fluvial Arctic grayling within the upper reaches of their historic range in the Big Hole River drainage by working with non-Federal property owners to implement conservation measures on their lands. The guidelines of this CCAA will be met by implementing conservation measures that improve stream flows, protect and restore riparian habitats, identify and reduce or eliminate entrainment (inadvertent capture) of grayling in irrigation ditches, and remove human-made barriers to grayling migration (MFWP *et al.* 2006, p. 3). Currently, 32 landowners representing 64,822 ha (160,178 ac) in the upper Big Hole River drainage are participating in the CCAA (Lamothe 2009, p. 5). The MFWP leads the Big Hole Grayling CCAA implementation effort, and is supported by Montana Department of Natural Resources and Conservation (MDNRC), USDA Natural Resources Conservation Service (NRCS), and the Service. Other groups helping implement the CCAA include the Big Hole Watershed Committee, the Big Hole River Foundation, Montana Trout Unlimited, the Western Water Project (affiliated with Trout Unlimited), and

The Nature Conservancy (Lamothe 2008, p. 23). Detailed information on conservation actions and restoration projects implemented under the plan are available in various reports (AGW 2010, p. 4; Everett 2010, entire; Lamothe *et al.* 2007, pp. 6–35; Lamothe 2008, pp. 7–21; Lamothe 2009, entire; Lamothe 2010, entire; Magee 2010b, entire; Roberts 2010, entire).

Biological Effectiveness of the Ongoing Conservation Programs

The current and anticipated effects of the aforementioned conservation programs on the biological status and threats to Arctic grayling of the upper Missouri River are discussed elsewhere in the document (see **Summary of Information Pertaining to the Five Factors** and **Finding** sections, below). We continue to encourage and promote collaborative efforts to secure existing populations, and to increase the distribution of the Arctic grayling within its historical range in the upper Missouri River basin.

Summary of Information Pertaining to the Five Factors

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the ESA, a species may be determined to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to the Missouri River DPS of Arctic grayling in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Curtailment of Range and Distribution

The number of river kilometers (miles) occupied by the fluvial ecotype of Arctic grayling in the Missouri River has been reduced by approximately 95 percent during the past 100 to 150 years (Kaya 1992, p. 51). The fluvial life history is only expressed in the population residing in the Big Hole River; the remnant population in the Madison River near Ennis Reservoir has apparently diverged toward an adfluvial life history. Arctic grayling distribution within the Centennial Valley in the upper Beaverhead River also has been severely curtailed during the last 50 to 100 years, such that the only remaining example of the species in that drainage is an adfluvial population associated with the Red Rock Lakes. Indigenous populations in the Big Hole River, Madison River, and Red Rock Lakes all exist at reduced densities on both contemporary and historical timescales. The Miner Lakes and Mussigbrod Lake populations appear to have been reproductively isolated for hundreds of years (USFWS, unpublished data), so a restricted distribution may represent the natural historical condition for these populations. The curtailment of range and distribution is a current threat, because the probability of extirpation of the DPS is related to the number of populations and their resilience. Since the DPS currently exists as a set of generally small, isolated populations that cannot naturally re-found or 'rescue' another population. Thus, the curtailment of range and distribution will remain a threat in the foreseeable future, absent the reestablishment of additional populations within the DPS' historical range. Reintroduction attempted under the auspices of the 1995 Restoration Plan (AGW 1995, entire) have been underway since 1997, but have not yet resulted in re-establishment of populations or the expansion of the DPS' current range.

Dams on Mainstem Rivers

The majority of the historical range of the Upper Missouri River DPS of Arctic grayling has been altered by the construction of dams and reservoirs that created barriers obstructing migrations to spawning, wintering, or feeding areas; inundated grayling habitat; and impacted the historical hydrology of river systems (Kaya 1990, pp. 51–52; Kaya 1992, p. 57). The construction of large dams on mainstem river habitats throughout the upper Missouri River system fragmented river corridors necessary for the expression of migratory life histories. Construction of dams that obstructed fish passage on the mainstem Missouri River (Hauser, Holter, Canyon Ferry, and Toston), Madison River (Madison–Ennis, Hebgen), Beaverhead River and its tributary Red Rock River (Clark Canyon, Lima), Ruby River (Ruby), and Sun River (Gibson) all contributed to the rangewide decline of this DPS (Vincent 1962, pp. 127–128; Kaya 1992, p. 57; see Figure 2).

Dams also may continue to impact the extant population in the Madison River. The Madison Dam (also known as Ennis Dam), as with the aforementioned dams, is a migration barrier with no fish passage facilities. Anglers have reported encountering Arctic grayling in pools below the dam, implying that fish occasionally pass (downstream) over or through the dam. These fish would be "lost" to the population residing above the dam because they cannot return upstream, but have apparently not established populations downstream. Operational practices of the Madison Dam also have been shown to affect the resident fishes. A population decline of Arctic grayling coincided with a reservoir drawdown in winter 1982–1983 that was intended to reduce the effects of aquatic vegetation on the hydroelectric operations at the dam (Byorth and Shepard 1990, pp. 52–53). This drawdown likely affected the forage base, rearing habitat, and spawning cycle of Arctic grayling in the reservoir.

The presence of mainstem dams is a historical, current, and future threat to the DPS. Lack of fish passage at these dams contributed to the extirpation of Arctic grayling from some waters by blocking migratory corridors (Vincent 1962, p. 128), curtailing access to important spawning and rearing habitats, and impounding water over former spawning locations (Vincent 1962, p. 128). These dams are an impediment to fish migration and limit the ability of fish to disperse between existing populations or recolonize habitat fragments, and will continue to act in this manner for the foreseeable future. We believe the presence of a mainstem dam is an immediate and imminent threat to the Madison River population, as the remaining grayling habitat is adjacent to Ennis Dam (see Figure 2). We not aware of any plans to retrofit the Ennis Dam or any other mainstem dam to provide upstream fish passage, so we expect the current situation to continue. The Federal Energy Regulatory Commission (FERC) license for hydroelectric generation at Ennis Dam will not expire until the year

2040 (FERC 2010, entire). The upper Missouri River basin dam having the FERC license with the latest expiration date is Clark Canyon Dam, which will not expire until 2059 (FERC 2010, entire). Thus, mainstem dams will remain a threat in the foreseeable future, which is 30 to 50 years based on the duration of existing FERC licenses in the upper basin.

Agriculture and Ranching

The predominant use of private lands in the upper Missouri River basin is irrigated agriculture and ranching, and these activities had and continue to have significant effects on aquatic habitats. In general, these effects relate to changes in water availability and alteration to the structure and function of aquatic habitats. The specific activities and their impacts are discussed below.

Smaller Dams and Fish Passage Barriers

Smaller dams or diversions associated with irrigation structures within specific watersheds continue to pose problems to Arctic grayling migratory behavior, especially in the Big Hole River drainage. In the Big Hole River, numerous diversion structures have been identified as putative fish migration barriers (Petersen and Lamothe 2006, pp. 8, 12–13, 29) that may limit the ability of Arctic grayling to migrate to spawning, rearing, or sheltering habitats under certain conditions. The Divide Dam on the Big Hole River near the town of Divide, Montana, has existed for nearly 80 years and is believed to be at least a partial barrier to upstream movement by fishes (Kaya 1992, p. 58). As with the larger dams, these smaller fish passage barriers can reduce reproduction (access to spawning habitat is blocked), reduce growth (access to feeding habitat is blocked), and increase mortality (access to refuge habitat is blocked). A number of planned or ongoing conservation actions to address connectivity issues on the Big Hole River and its tributaries may reduce the threat posed by movement barriers for Arctic grayling in that habitat. The Divide Dam is being replaced with a new structure that provides fish passage, and construction began in July 2010 (Nicolai 2010, pers. comm.). At least 17 fish ladders have been installed at diversion structures in the Big Hole River since 2006 as part of the Big Hole Grayling CCAA (AGW 2010, p. 4), and a culvert barrier at a road crossing on Governor Creek (headwaters of Big Hole River) was replaced with a bridge that is expected to provide upstream passage for aquatic organisms under all flow conditions (Everett 2010, pp. 2–6). Non-Federal landowners who control approximately 50 to 70 percent of the points of irrigation diversion in the upper Big Hole River are enrolled in the CCAA (Roberts and Lamothe 2010, pers. comm.), so the threats posed by fish passage barriers should be substantially reduced in the Big Hole River during the next 10 to 20 years (foreseeable future) based on the minimum duration of site-specific plans for landowners enrolled in the CCAA and the duration of the ESA section 10(a)(1)(A) enhancement of survival permit (TE 104415-0) associated with the CCAA (MFWP *et al.* 2006, p. 75).

Fish passage barriers also have been noted in the Red Rock Lakes system (Unthank 1989, p. 9). Henshall (1907, p. 5) noted that spawning Arctic grayling migrated from the Jefferson River system, through the Beaverhead River and Red Rock River through the Red Rock Lakes and into the upper drainage, and then returned downstream after spawning. The construction of a water control structure (sill) at the outlet of Lower Red Rock Lake in 1930 (and reconstructed in 1957 (USFWS 2009, p. 74)) created an upstream migration barrier that blocked these migrations (Unthank 1989, p. 10; Gillin 2001, p. 4-4). This structure, along with mainstem dams at Lima and Clark Canyon, extirpated spawning runs of Arctic grayling that historically migrated through the Beaverhead and Red Rock Rivers (see Figure 2; USFWS 2009, p. 72). All of these structures preclude upstream movement by fishes, and continue to prohibit immigration of Arctic grayling from the Big Hole River (see Figure 2). Because recovery of Arctic grayling will necessitate expansion into unoccupied habitat, and the Big Hole River includes some of the best remaining habitat for the species, these dams constitute a threat to Arctic grayling now and in the foreseeable future, which is 30 to 50 years based on the duration of existing FERC licenses in the upper basin.

In Mussigbrod Lake, Arctic grayling occasionally pass downstream over a diversion structure at the lake outlet, and become trapped in a pool that is isolated because of stream dewatering (Magee and Olsen 2010, pers. comm.). However, the potential for mortality in these fish is partially mitigated by MFWP, which periodically captures Arctic grayling in this pool and returns them to the lake.

In the Red Rock Lakes system, the presence of fish passage barriers represents a past and present threat. The magnitude of the threat may be reduced in the next 15 years as a result of implementation of the Red Rock Lakes NWR Comprehensive Conservation Plan (CCP) (USFWS 2009, entire — see Factor D discussion below), but we conclude that not all barriers that potentially affect the population will addressed during this time (e.g., Lower Red Rock Lake Water Control Structure) (USFWS 2009, p. 43). Thus, fish passage barriers will remain a threat to the Red Rock Lakes grayling in the foreseeable future.

In the Big Hole River, fish passage barriers represent a past and present threat. The magnitude of the threat in the Big Hole River should decrease appreciably during the next 10 to 20 years, which represents the foreseeable future in terms of the potential for the Big Hole Grayling CCAA to address the threat. Additional projects, such as the replacement of the Divide Dam, also should reduce the threat in the foreseeable future.

Dewatering From Irrigation and Consequent Increased Water Temperatures

Demand for irrigation water in the semi-arid upper Missouri River basin has dewatered many rivers formerly or currently occupied by Arctic grayling. The primary effects of this dewatering are: 1) Increased water temperatures, and 2) reduced habitat capacity. In ectothermic species like salmonid fishes, water temperature sets basic constraints on species distribution and physiological performance, such as activity and growth (Coutant 1999, pp. 32–52). Increased water temperatures can reduce the growth and survival of Arctic grayling (physiological stressor). Reduced habitat capacity can concentrate fishes and thereby increase competition and predation (ecological stressor).

In the Big Hole River system, surface-water (flood) irrigation has substantially altered the natural hydrologic function of the river and has led to acute and chronic stream dewatering (Shepard and Oswald 1989, p. 29; Byorth 1993, p. 14; 1995, pp. 8–10; Magee *et al.* 2005, pp. 13–15). Most of the Big Hole River mainstem exceeds water quality standards under the Clean Water Act (33. U.S.C. 1251 *et seq.*; see discussion under Factor D, below) because of high summer water temperatures (Flynn *et al.* 2008, p. 2). Stream water temperature is affected by flow volume, stream morphology, and riparian shading, along with other factors, but an inverse relationship between flow volume and water temperature is apparent in the Big Hole River (Flynn *et al.* 2008, pp. 18–19). Summer water temperatures exceeding 21 °C (70 °F) are

considered to be physiologically stressful for cold-water fish species, such as Arctic grayling (Hubert *et al.* 1985, pp. 7, 9). Summer water temperatures consistently exceed 21 °C (70 °F) in the mainstem of Big Hole River (Magee and Lamothe 2003, pp. 13–14; Magee *et al.* 2005, p. 15; Rens and Magee 2007, p. 11). Recently, summer water temperatures have consistently exceeded the upper incipient lethal temperature (UILT) for Arctic grayling (e.g., 25 °C or 77 °F) (Lohr *et al.* 1996) at a number of monitoring stations throughout the Big Hole River (Magee and Lamothe 2003, pp. 13–14; Magee *et al.* 2005, p. 15; Rens and Magee 2007, p. 11). The UILT is the temperature that is survivable indefinitely (for periods longer than 1 week) by 50 percent of the "test population" in an experimental setting. Fish kills are a clear result of high water temperature and have been documented in the Big Hole River (Lohr *et al.* 1996, p. 934). Consequently, water temperatures that are high enough to cause mortality of fish in the Big Hole River represent a clear threat to Arctic grayling because of the potential to directly and quickly reduce the size of the population.

Water temperatures below that which can lead to instant mortality also can affect individual fish. At water temperatures between 21 °C (70 °F) and 25 °C (77 °F), Arctic grayling can survive but experience chronic stress that can impair feeding and growth, reduce physiological performance, and ultimately reduce survival and reproduction. As described above, the Big Hole River periodically experiences summer water temperatures high enough to cause morality and chronic stress to Arctic grayling. Increased water temperature also appears to be a threat to Arctic grayling in the Madison River and Red Rock watershed. Mean and maximum summer water temperatures can exceed 21 °C (70 °F) in the Madison River below Ennis Reservoir (U.S. Geological Survey (USGS) 2010), and have exceeded 22 °C (72 °F) in the reservoir, and 24 °C (75 °F) in the reservoir inlet (Clancey and Lohrenz 2005, p. 34). Similar or higher temperatures have been noted at these same locations in recent years (Clancey 2002, p. 17; 2003, p. 25; 2004, pp. 29–30). Surface water temperatures in Upper Red Rock Lake as high as 24 °C (75 °F) have been recorded (Gillin 2001, p. 4-6), and presence of Arctic grayling in the lower 100 m (328 ft) of East Shambow Creek in 1994 was attributed to fish seeking refuge from high water temperatures in the lake (Mogen 1996, p. 44). Mean summer water temperatures in Red Rock Creek can occasionally exceed 20°C or 68°F during drought conditions (Mogen 1996, pp. 19, 45). Arctic grayling can survive but experience chronic stress that can impair feeding and growth, reduce physiological performance, and ultimately reduce survival and reproduction.

Experimental data specifically linking hydrologic alteration and dewatering to individual and population-level effects for Arctic grayling is generally lacking (Kaya 1992, p. 54), but we can infer effects from observations that the abundance and distribution of Arctic grayling has declined concurrent with reduced streamflows (MFWP *et al.* 2006, pp. 39–40) and increased water temperatures associated with low streamflows.

In the Big Hole River system, early-season (April through May) irrigation withdrawals may dewater grayling spawning sites (Byorth 1993, p. 22), preventing spawning or causing egg mortality; can prevent juvenile grayling from accessing cover in the vegetation along the shoreline; and may reduce connectivity between necessary spawning, rearing, and refuge habitats. Severe dewatering reduces habitat volume and may concentrate fish, increasing the probability of competition and predation among and between species. Nonnative trout species presently dominate the salmonid community in the Big Hole River, so dewatering would tend to concentrate Arctic grayling in habitats where interactions with these nonnative trout would be likely.

Especially in the Big Hole River, dewatering from irrigation represents a past and present threat to Arctic grayling. Thermal loading has apparently been a more frequent occurrence in the Big Hole River than in other locations containing native Arctic grayling (e.g., Red Rock Creek and Madison River–Ennis Reservoir). Implementation of the Big Hole Grayling CCAA during the next 20 years, which requires conservation measures to increase stream flows and restore riparian habitats (MFWP 2006, pp. 22–48), should significantly reduce the threat of thermal loading for Big Hole River grayling in the foreseeable future. While we expect agricultural and ranching-related use of water to continue, we expect that the threat will be reduced, but not eliminated, in the foreseeable future in the Big Hole River as a consequence of the CCAA. The ability of the Big Hole Grayling CCAA to augment streamflows should be substantial, as non-Federal landowners who control approximately 50 to 70 percent of the points of irrigation diversion in the upper Big Hole River are enrolled in the CCAA (Roberts and Lamothe 2010, pers. comm.). However, the Big Hole River constitutes one population in the DPS and high water temperatures are likely to continue to affect grayling in the Madison River and Red Rock Lakes. Thus, stream dewatering and high water temperatures are expected to remain a threat to the DPS in the foreseeable future.

Entrainment

Entrainment can permanently remove individuals from the natural population and strand them in a habitat that lacks the required characteristics for reproduction and survival. Irrigation ditches may dry completely when irrigation headgates are closed, resulting in mortality of entrained grayling. Entrainment of individual Arctic grayling in irrigation ditches occurs in the Big Hole River (Skarr 1989, p. 19; Streu 1990, pp. 24–25; MFWP *et al.* 2006, p. 49; Lamothe 2008, p. 22). Over 1,000 unscreened diversion structures occur in the upper Big Hole River watershed, and more than 300 of these are located in or near occupied grayling habitat (MFWP *et al.* 2006, pp. 48–49).

The magnitude of entrainment at unscreened diversions can depend on a variety of physical and biological factors, including the volume of water diverted (Kennedy 2009, p. iv, 36–38; but see Post *et al.* 2007, p. 885), species-specific differences in the timing of migratory behavior relative to when water is being diverted (Carlson and Rahel 2007, pp. 1340–1341), and differences in vulnerability among body size or life-stage (Gale 2005, pp. 30–47; Post *et al.* 2006, p. 975; Carlson and Rahel 2007 pp. 1340–1341). Studies of other salmonid species in a river basin in southwestern Wyoming determined that ditches typically entrain a small proportion (less than 4 percent) of the total estimated trout in the basin (Carlson and Rahel 2007, p. 1335) and that this represented a very small percentage of the total mortality for those populations (Post *et al.* 2006, pp. 875, 884; Carlson and Rahel 2007, pp. 1335, 1339). Whether or not this amount of mortality can cause population instability is unclear (Post *et al.* 2006, p. 886; Carlson and Rahel 2007, pp. 1340–1341). However, in some cases, even small vital rate changes in a trout population can theoretically cause population declines (Hilderbrand 2003, pp. 260–261).

The overall magnitude and population-level effect of entrainment on Arctic grayling in the Big Hole River

is unknown but possibly significant given the large number of unscreened surface-water diversions in the system and the large volumes of water diverted for irrigation. Given the low abundance of the species, even a small amount of entrainment may be biologically significant and is unlikely to be offset by compensatory effects (i.e., higher survival in Arctic grayling that are not entrained).

Entrainment also may be a problem for Arctic grayling at some locations within the Red Rock Lakes system (Unthank 1989, p. 10; Gillin 2001, pp. 2-4, 3-18, 3-25), particularly outside of the Red Rock Lakes NWR (Boltz 2010, pers. comm.).

Entrainment has been a past threat to Arctic grayling in the Big Hole River and the Red Rock Lakes system. It remains a current threat as most, if not all, irrigation diversions located in occupied habitat do not have any devices to exclude fish (i.e., fish screens). Entrainment will remain a threat in the foreseeable future unless diversion structures are modified to exclude fish. The Big Hole Grayling CCAA has provisions to reduce entrainment at diversions operated by enrolled landowners (MFWP *et al.* 2006, pp. 50–52). Non-Federal landowners enrolled in the CCAA control approximately 50 to 70 percent of the points of irrigation diversion in the upper Big Hole River (Roberts and Lamothe 2010, pers. comm.), so the threat of entrainment in the Big Hole River should be significantly reduced in the foreseeable future. We consider the foreseeable future to represent approximately 20 years based on the duration of the Big Hole Grayling CCAA. Under the auspices of the Red Rock Lakes NWR CCP, a fish screen is planned to be installed on at least one diversion on the Red Rock Creek (USFWS 2009, p. 72), which is the primary spawning tributary for Arctic grayling in the Red Rock Lakes system. Overall, we anticipate it may take years to design and install fish screens on all the diversions that can entrain grayling in the Big Hole River and Red Rock Lakes systems; thus we conclude that entrainment remains a current threat that will continue to exist, but will decline in magnitude during the foreseeable future (next 10 to 20 years) because of implementation of the CCAA and CCP.

Degradation of Riparian Habitat

Riparian corridors are important for maintaining habitat for Arctic grayling in the upper Missouri River basin, and in general are critical for the ecological function of aquatic systems (Gregory *et al.* 1991, entire). These riparian zones are important for Arctic grayling because of their effect on water quality and role in creating and maintaining physical habitat features (pools) used by the species.

Removal of willows and riparian clearing concurrent with livestock and water management along the Big Hole River has apparently accelerated in recent decades, and, in conjunction with streamside cattle grazing, has led to localized bank erosion, channel instability, and channel widening (Confluence Consulting *et al.* 2003, pp. 24–26; Petersen and Lamothe 2006, pp. 16–17; Bureau of Land Management (BLM) 2009a, pp. 14–21). Arctic grayling abundance in the upper Big Hole River is positively related to the presence of overhanging vegetation, primarily willows, which are associated with pool habitat (Lamothe and Magee 2004b, pp. 21–22). Degradation of riparian habitat in the upper Big Hole River has led to a shift in channel form (from multiple threads to a single wide channel), increased erosion rates, reduced cover, increased water temperatures, and reduced recruitment of large wood into the active stream channel (Confluence Consulting *et al.* 2003, pp. 24–26). All of these combine to reduce the suitability of the habitat for species like Arctic grayling, and likely reduce grayling growth, survival, and reproduction.

Livestock grazing both within the Red Rock Lakes NWR and on adjacent private lands has negatively affected the condition of riparian habitats on tributaries to the Red Rock Lakes (Mogen 1996, pp. 75–77; Gillin 2001, pp. 3-12, 3-14). In general, degraded riparian habitat limits the creation and maintenance of aquatic habitats, especially pools, that are preferred habitats for adult Arctic grayling (Lamothe and Magee 2004b, pp. 21–22; Hughes 1992, entire). Loss of pools likely reduces growth and survival of adult grayling. Loss of riparian vegetation increases bank erosion, which can lead to siltation of spawning gravels, which may in turn harm grayling by reducing the extent of suitable spawning habitat and reducing survival of Arctic grayling embryos already present in the stream gravels. The condition of riparian habitats upstream from the Upper and Lower Red Rock Lakes may have improved during the 1990s (Mogen 1996, p. 77), and ongoing efforts to improve grazing management and restore riparian habitats are ongoing both inside the Red Rock Lakes NWR (USFWS 2009, pp. 67, 75) and upstream (AGW 2010, p. 7; Korb 2010, pers. comm.). However, the existing condition of riparian habitats continues to constitute a threat to Arctic grayling because the loss of pool habitat and the deposition of fine sediments may take some time to be reversed after the recovery of riparian vegetation.

Much of the degradation of riparian habitats in the Big Hole River and Red Rock Lakes systems has occurred within the past 50 to 100 years, but the influence of these past actions continues to affect the structure and function of aquatic habitats in these systems. Thus, while the actual loss of riparian vegetation has presumably slowed during the past 10 years, the effect of reduced riparian vegetation continues to promote channel widening and sedimentation, and limits the creation and maintenance of pool habitats. Thus, degradation of riparian habitats is a current threat. Degradation of riparian habitats will remain a threat in the foreseeable future until riparian vegetation recovers naturally or through direct restoration, which may occur during the next 20 years in the Big Hole River and portions of the Red Rock Lakes system. Protection and direct restoration of riparian habitats in the Big Hole River is occurring on a fairly large scale under the provisions of the Big Hole Grayling CCAA (Lamothe *et al.* 2007, pp. 13–26; Everett 2010, pp. 10–23), which should substantially reduce threats from riparian habitat degradation on private lands. Protection and restoration of riparian habitats implemented under the Red Rock Lakes NWR's CCP (see discussion under Factor D, below) should reduce threats from riparian habitat degradation within the NWR's boundary, but similar actions need to be taken on private lands adjacent to it (AGW 2010, p. 7; Korb 2010, pers. comm.) to appreciably reduce these threats in the foreseeable future and to expand the distribution of the species into formerly occupied habitat within that drainage.

Sedimentation

Sedimentation has been proposed as a mechanism behind the decline of Arctic grayling and its habitat in the Red Rock Lakes (Unthank 1989, p. 10; Mogen 1996, p. 76). Livestock grazing upstream has led to accelerated sediment transport in tributary streams, and deposition of silt in both stream and lakes has likely led to loss of fish habitat by filling in pools, covering spawning gravels, and reducing water depth in Odell and Red Rock Creeks, where Arctic grayling are still believed to spawn (MFWP 1981, p. 105; Mogen 1996, pp. 73–76).

Sedimentation in the Upper and Lower Red Rock Lakes is believed to

affect Arctic grayling by, in winter, reducing habitat volume (e.g., lakes freezing to the bottom) and promoting hypoxia (low oxygen), which generally concentrates fish in specific locations which have suitable depth, and thus increases the probability of competition and predation, and, in summer, causing thermal loading stress (see Dewatering From Irrigation and Consequent Increased Water Temperatures discussion, above). Depths in the Red Rock Lakes have decreased significantly, with a decline in maximum depth from 7.6 to 5.0 m (25 to 16.4 ft) to less than 2 m (6.5 ft) noted in Upper Red Rock Lake over the past century (Mogen 1996, p. 76). Lower Red Rock Lake has a maximum depth of approximately 0.5 m (1.6 ft), and freezes within a few inches of the bottom or freezes solid (Unthank 1989, p. 10). Consequently, the Lower Red Rock Lake does not appear to provide suitable overwintering habitat for adfluvial Arctic grayling and may be devoid of grayling except for the few individuals that may migrate between Odell Creek and Upper Red Rock Lake (Mogen, 1996, p. 47).

Dissolved oxygen levels in Upper Red Rock Lake during winter 1994-1995 dropped as low as 0.5 to 0.15 parts per million (ppm; Gangloff 1996, pp. 41–42, 72), well below the critical minimum of 1.3 to 1.7 ppm measured for adult Arctic grayling acclimated to water temperatures less than or equal to 8 °C (46 °F) (Feldmeth and Eriksen 1978, pp. 2042–2043). Thus, lethally low oxygen levels can occur during winter in Upper Red Rock Lake, the primary overwintering area for adfluvial Arctic grayling in the system. Winter kill of invertebrates and fishes (e.g., suckers *Catostomus* spp.) has been recorded in Upper Red Rock Lake (Gangloff 1996, pp. 39–40). Gangloff (1996, pp. 71, 79) hypothesized that Arctic grayling in Upper Red Rock Lake exhibit behavioral mechanisms or physiological adaptations that permit them to survive otherwise lethally low oxygen levels. Oxygen conditions in the lake during winter are related to the effect of snowpack and ice cover on light penetration and the density of macrophytes (rooted aquatic plants) during the preceding growing season (Gangloff 1996, pp. 72-74). Arctic grayling under winter ice seek areas of higher oxygen concentration (oxygen refugia) within the lake or near inlet streams of Upper Red Rock Lake (Gangloff 1996, pp. 78-79). Consequently, we expect factors leading to reduced lake depth due to upstream erosion and sedimentation within the lake, or factors that promote eutrophication due to macrophyte growth, to lead to more frequent winter hypoxia (low dissolved oxygen concentrations detrimental to aquatic organsims) in Upper Red Rock Lake, which is the most important overwintering habitat for adfluvial Arctic grayling in the system.

The effects of erosion and sedimentation on spawning gravels and reduction of habitat volume in Upper and Lower Red Rock Lakes are past and current threats. Improved land use may be reducing the rates of erosion in tributary streams (USFWS 2009, pp. 75–76; Korb 2010, pers. comm.). However, sedimentation of the lakes will likely remain a threat (because of reduced overwintering habitat, and high water temperatures in summer) in the foreseeable future unless some event mobilizes these sediments and transports them out of the lakes.

Protection and restoration of riparian habitats implemented under the Red Rock Lakes NWR's CCP (see discussion under Factor D, below) should reduce the magnitude of sedimentation within the NWR's boundaries, but similar actions need to be taken on private lands adjacent to it (AGW 2010, p. 7; Korb 2010, pers. comm.) to appreciably reduce threats in the foreseeable future.

Summary of Factor A

Based on the best available information, we find that the historical range of the Missouri River DPS of Arctic grayling has been greatly reduced, and the remaining native populations continue to face significant threats to their habitat. Large-scale habitat fragmentation by dams was likely a significant historical factor causing the range-wide decline of the DPS. The most significant current threats to the DPS are from land and water use activities that have affected the structure and function of aquatic systems, namely stream dewatering from irrigation withdrawals, which reduces habitat volume and increases summer water temperatures; potential loss of individuals in irrigation ditches (entrainment); degraded riparian habitats promoting erosion, sedimentation, increased water temperatures, and loss of pool habitat; and migration barriers that restrict movement to and from spawning, feeding, and sheltering habitats. These are among the significant current threats to Arctic grayling populations in the Big Hole River, Madison River–Ennis Reservoir, and Red Rock Lakes system. The habitat-related threats to the Big Hole River population should be reduced in the foreseeable future by implementation of the Big Hole Grayling CCAA, a formalized conservation plan with 32 private landowners currently enrolled. The Big Hole Grayling CCAA is expected to reduce threats from dewatering, high water temperatures, barriers to fish passage, and entrainment in irrigation ditches that are associated with land and water use in the upper Big Hole River watershed during the foreseeable future (next 20 years based on the duration of the CCAA). Non-Federal landowners enrolled in the Big Hole Grayling CCAA control or own approximately 50 to 70 percent of the points of irrigation diversion in the upper Big Hole River, so these landowners should have the ability to reduce habitat-related threats to Arctic grayling in the Big Hole River by a corresponding amount. However, the present or threatened destruction, modification, or curtailment of habitat remains a threat to the DPS overall. This factor is expected to continue to be a threat to the species in the foreseeable future because it is not comprehensively addressed for other populations, especially those in the Madison River and Red Rock Lakes systems where ongoing habitat-related threats (described above) may be making unoccupied habitat unsuitable for Arctic grayling, and may thus limit the recovery potential of the DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Arctic grayling of the upper Missouri River are handled for recreational angling; and for scientific, population monitoring, and restoration purposes.

Recreational Angling

Arctic grayling are highly susceptible to capture by angling (ASRD 2005, pp. 19–20), and intense angling pressure can reduce densities and influence the demography of exploited populations (Northcote 1995, pp. 171–172). Overfishing likely contributed to the rangewide decline of the DPS in the upper Missouri River system (Vincent 1962, pp. 49–52, 55; Kaya 1992, pp. 54–55). In 1994, concern over the effects of angling on fluvial Arctic grayling led the State of Montana to implement catch-and-release regulations for Arctic grayling captured in streams and rivers within its native range, and those regulations remain in effect (MFWP 2010, p. 52). Catch-and-release regulations for Arctic grayling in the Big Hole River have been in effect since 1988 (Byorth 1993, p. 8). Catch-and-release regulations also are in effect for Ennis Reservoir on the Madison River (MFWP 2010, p. 61). Angling is not

permitted in either of the Red Rock Lakes to protect breeding waterfowl and trumpeter swans (*Cygnus buccinator*) (USFWS 2009, p. 147), and catch-and-release regulations remain in effect for any Arctic grayling captured in streams (e.g., Odell Creek or Red Rock Creek) in the Red Rock Lakes system (MFWP 2010, p. 56).

In Miner and Mussigbrod Lakes, anglers can keep up to 5 Arctic grayling per day and have up to 10 in possession, in accordance with standard daily and possession limits for that angling management district (MFWP 2010, p. 52). The current abundance of Arctic grayling in Mussigbrod Lake (see Table 4 above) suggests that present angling exploitation rates are not a threat to that population. Miner Lakes grayling are less abundant compared to Mussigbrod Lake, but we are not sure whether angling exploitation constitutes a threat to Miner Lakes grayling.

Repeated catch-and-release angling may harm individual fish, causing physiological stress and injury (i.e., hooking wounds). Catch-and-release angling also can result in mortality at a rate dependent on hooking location, hooking duration, fish size, water quality, and water temperature (Faragher *et al.* 2004, entire; Bartholomew and Bohnsack 2005, p. 140). Repeated hooking (up to five times) of Arctic grayling in Alaska did not result in significant additional mortality (rates 0 to 1.4 percent; Clark 1991, pp. 1, 25–26). In Michigan, hooking mortality of Arctic grayling in lakes averaged 1.7 percent per capture event based on 355 individuals captured with artificial flies and lures (Nuhfer 1992, pp. 11, 29). Higher mortality rates (5 percent) have been reported for Arctic grayling populations in the Great Slave Lake area, Canada (Falk and Gillman 1975, cited in Casselman 2005, p. 23). Comparatively high catch rates for Arctic grayling have been observed in the Big Hole River, Montana (Byorth 1993, pp. 26–27, 36), and average hooking wound rates ranged from 15 to 30 percent among study sections (Byorth 1993, p. 28). However, overall hooking mortality from single capture events was low (1.4 percent), which led Byorth to conclude that the Big Hole River population was not limited by angling (Byorth 1994b, entire).

Compared to the average catch-and-release mortality rates of 4.2 to 4.5 percent in salmonids as reported by Schill and Scarpella (1997, p. 873), and the mean and median catch-and-release mortality rates of 18 percent and 11 percent from a meta-analysis of 274 studies (Bartholomew and Bohnsack 2005, pp. 136–137), the catch-and-release mortality rates for Arctic grayling are comparatively low (Clark 1991, pp. 1, 25–26; Nuhfer 1992, pp. 11, 29; Byorth 1994b, entire). We are uncertain whether these lower observed rates reflect an innate resistance to effects of catch-and-release angling in Arctic grayling or whether they reflect differences among particular populations or study designs used to estimate mortality. Even if catch-and-release angling mortality is low (e.g., 1.4 percent as reported in Byorth 1994b, entire), the high catchability of Arctic grayling (ASRD 2005, pp. 19–20) raises some concern about the cumulative mortality of repeated catch-and-release captures. For example, based on the Arctic grayling catch rates and angler pressure reported by Byorth (1993, pp. 25–26) and the population estimate for the Big Hole River reported in Byorth (1994a, p. ii), a simple calculation suggests that age 1 and older grayling susceptible to recreational angling may be captured and released 3 to 6 times per year.

The MFWP closes recreational angling in specific reaches of the Big Hole River when environmental conditions are considered stressful. Specific streamflow and temperature thresholds initiate mandatory closure of the fishery (Big Hole Watershed Committee 1997, entire). Such closures have been implemented in recent years. For example, the upper segment of the Big Hole River between Rock Creek Road to the confluence of the North Fork Big Hole River has been closed to angling at various times during 2004 (Magee *et al.* 2005, p. 7), 2005 (Magee *et al.* 2006, p. 20), and 2006 (Rens and Magee 2007, p. 8).

In conclusion, angling harvest may have significantly reduced the abundance and distribution of the upper Missouri River DPS of Arctic grayling during the past 50 to 100 years, but current catch-and-release fishing regulations (or angling closures) in most waters occupied by extant populations have likely ameliorated the past threat of overharvest. Although we have some concerns about the potential for cumulative mortality caused by repeated catch-and-release of individual Arctic grayling in the Big Hole River, we have no strong evidence indicating that repeated capture of Arctic grayling under catch-and-release regulations is currently limiting that population or the DPS. Moreover, fishing is restricted in the Big Hole River, an important recreational fishing destination in southwestern Montana, when streamflow and temperature conditions are likely to increase stress to captured grayling. Anglers can still capture and keep Arctic grayling in Miner and Mussigbrod Lakes in accordance with State fishing regulations, but we have no evidence that current levels of angling are affecting these populations. We thus have no evidence that recreational angling represents a current threat to the DPS. If we assume that future fishing regulations would be at least as conservative as current regulations, and that the current levels of angling pressure will continue, then recreational angling does not represent a threat in the foreseeable future.

Monitoring and Scientific Study

The MFWP consistently monitors the Arctic grayling population in the Big Hole River and its tributaries, and to a lesser extent those populations in the Madison River and Red Rock Lakes system (Rens and Magee 20007, entire). Electrofishing (use of electrical current to temporarily and non-lethally immobilize a fish for capture) is a primary sampling method to monitor Arctic grayling in the Big Hole River, Madison River, and Red Rock Lakes (Rens and Magee 2007, pp. 13, 17, 20). A number of studies have investigated the effects of electrofishing on various life stages of Arctic grayling. Dwyer and White (1997, p. 174) found that electrofishing reduced the growth of juvenile Arctic grayling and concluded that long-term, sublethal effects of electrofishing were possible. Hughes (1998, pp. 1072, 1074–1075) found evidence that electrofishing and tagging affected the growth rate and movement behavior of Arctic grayling in the Chena River, Alaska. Roach (1999, p. 923) studied the effects of electrofishing on fertilized Arctic grayling eggs and found that while electrofishing could result in egg mortality, the population-level effects of such mortality were not likely to be significant. Lamothe and Magee (2003, pp. 16, 18–19) noted mortality of Arctic grayling in the Big Hole River during a radio-telemetry study, and concluded that handling stress or predation were possible causes of mortality. Population monitoring activities in the Big Hole River are curtailed when environmental conditions become unsuitable (Big Hole Watershed Committee 1997, entire), and recent monitoring reports (Magee and Lamothe 2004, entire; Magee *et al.* 2005, entire; Rens and Magee 2007, entire) provide no evidence that electrofishing is harming the Arctic grayling population in the Big Hole River.

A study in the Big Hole River is investigating the availability and use of coldwater thermal refugia for Arctic grayling and other resident fishes (Vatland and Gressewell 2009, entire).

The study uses fish tagged with passive integrated transponder (PIT) tag technology to record movement past receiving antennas. The PIT tags are small (23 mm or less than 1 in. long) and implanted into the body cavity of the fish during a quick surgical procedure. During 2007–2008, a total of 81 Arctic grayling from the Big Hole River and its tributaries were implanted with these PIT tags (Vatland and Gressewell 2009, p. 12). A short-term study on the potential effects of PIT tag implantation on Arctic grayling found 100 percent retention of tags and 100 percent survival of tagged individuals during a 4–day trial (Montana State University 2008, p. 7). Based on the results of the controlled trials, we have no evidence to indicate that PIT tagging the wild Arctic grayling in the Big Hole River constitutes a significant threat to the population.

Traps, electrofishing, and radio telemetry have been used to monitor and study Arctic graying in the Red Rock Lakes system (Gangloff 1996, pp. 13–14; Mogen 1996, pp. 10–13, 15; Kaeding and Boltz 1999, p. 4; Rens and Magee 2007, p. 17); however, there is no data to indicate these monitoring activities reduce the growth and survival of individual Arctic grayling or otherwise constitute a current or future threat to the population.

The Arctic grayling population in the Madison River–Ennis Reservoir is not monitored as intensively as the Big Hole River population (Rens and Magee 2007, pp. 20–21). When electrofishing surveys targeting Arctic grayling in the Madison River do occur, they are conducted during the spawning run for that population (Clancey 1996, p. 6). Capture and handling during spawning migrations or during actual spawning could affect the reproductive success of individual Arctic grayling. However, under recent monitoring frequencies, any population-level effect of these activities is likely negligible, and we have no data to indicate these monitoring activities reduce the growth and survival of individual Arctic grayling or otherwise constitute a current or future threat to the Madison River population.

The Miner Lakes and Mussigbrod Lake populations of Arctic grayling are infrequently monitored (Olsen 2010, pers. comm.). Since monitoring of these populations has been minimal, we do not believe that monitoring or scientific study constitutes a current or foreseeable threat to these particular populations.

The intensity of monitoring and scientific investigation varies among the different populations in the DPS, but we have no evidence suggesting that monitoring or scientific study has influenced the decline of Arctic grayling in the Missouri River basin. We also have no evidence indicating these activities constitute a current threat to the DPS that would result in measurable, population-level effects. We expect similar levels of population monitoring and scientific study in the future, and we have no basis to conclude that these activities represent a threat in the foreseeable future.

Reintroduction Efforts

Attempts to restore or re-establish native populations of both fluvial and adfluvial Arctic grayling may result in the mortality of embryos and young fish. The MFWP attempted to restore fluvial Arctic graying to historic waters in the upper Missouri River using a combination of stocking and embryo incubating devices (remote site incubators) placed in target streams (Rens and Magee 2007, pp. 24–38). Currently, gametes (eggs and sperm) used to re-establish the fluvial ecotype come from captive brood reserves of Big Hole River grayling maintained in Axolotl and Green Hollow II Lakes (Rens and Magee 2007, pp. 22–24). Removal of gametes from the wild Big Hole River population was necessary to establish this brood reserve (Leary 1991, entire). The previous removal of gametes for conservation purposes may have reduced temporarily the abundance of the wild population if the population was unable to compensate for this effective mortality by increased survival of remaining individuals. However, the establishment of a brood reserve provides a conservation benefit from the standpoint that gametes from the reserve can be harvested to use for translocation efforts to benefit the species. Unfortunately, these translocations have not yet resulted in establishment of any fluvial populations. Ultimately, we do not have any data to indicate that past gamete collection from the Big Hole River population harmed the wild population. Consequently, we have no basis to conclude that gamete collection from the wild Big Hole River Arctic grayling population constitutes a current or future threat to the population.

Efforts to re-establish native, genetically pure populations of adfluvial Arctic grayling in the Red Rock Lakes system and to maintain a brood reserve for that population have resulted in the direct collection of eggs from Arctic grayling spawning runs in Red Rock Creek. During 2000–2002, an estimated 315,000 Arctic grayling eggs were collected from females captured in Red Rock Creek (Boltz and Kaeding 2002, pp. v, 8). The Service placed over 180,000 of these eggs in remote site incubators in streams within the Red Rock Lakes NWR that historically supported Arctic grayling spawning runs (Boltz and Kaeding 2002, pp. v, 10). Despite preliminary observations of grayling spawning in historically occupied waters within the Red Rock Lakes NWR following the use of remote site incubators (Kaeding and Boltz 2004, pp. 1036), spawning runs at these locations have apparently not become established (Boltz 2006, pers. comm.). Attempts to establish a brood reserve of adfluvial Arctic grayling within the NWR's boundaries (MacDonald Pond) were not successful (Boltz and Kaeding 2002, pp. 21–22). Red Rock Lakes NWR plans to re-establish Arctic grayling in Elk Springs and Picnic Creeks and establish a brood stock in Widgeon Pond as part of its CCP (USFWS 2009, pp. 72, 75). The MFWP and the Service are currently collaborating on an effort to re-establish an Arctic grayling spawning run in Elk Springs Creek and to establish a genetically pure brood reserve of Red Rock Lakes grayling in Elk Lake as no such population exists for use in conservation and recovery (Jordan 2010, pers. comm.). These actions will require the collection of gametes (approximately 360,000 eggs) from Arctic grayling captured in Red Rock Creek (Jordan 2010, pers. comm.). Approximately 10 percent of these eggs will be returned to Red Rock Creek and incubated in that stream (using a remote site incubation method that results in high survivorship of embryos) (Kaeding and Boltz 2004, entire) to mitigate for collection of gametes from the wild spawning population (Jordan 2010, pers. comm.). We presume these ongoing actions may necessitate the collection of gametes from wild Arctic grayling in Red Rock Creek, so the potential effect of such collections on the extant wild population should be evaluated and mitigation for the use of these gametes (e.g., using remote site incubators at the collection source or another method) should continue.

Overall, we have no evidence to indicate that collection of gametes from the wild populations in the Big Hole River and Red Rock Lakes systems have contributed to population-level declines in those populations, or that the previous collections represent overexploitation. Future plans to collect gametes from Arctic grayling in the Big Hole River and Red Rock Lakes should be carefully evaluated in light of the status of those populations at the anticipated time of the collections. We

encourage the agencies involved to coordinate their efforts and develop a strategy for broodstock development and recovery efforts that minimizes any potential impacts to wild native populations. However, at present, we do not have any data indicating collection of gametes for conservation purposes represents a current threat to the Big Hole River and Red Rock Lakes populations. We have no evidence to indicate that gamete collection will increase in the future, so we have no basis to conclude that this represents a threat in the foreseeable future.

Summary of Factor B

Based on the information available at this time, we conclude that overexploitation by angling may have contributed to the historical decline of the upper Missouri River DPS of Arctic grayling, but we have no evidence to indicate that current levels of recreational angling, population monitoring, scientific study, or conservation actions constitute overexploitation; therefore, we do not consider them a threat. We expect similar levels of these activities to continue in the future, and we do not believe they represent a threat in the foreseeable future.

C. Disease or Predation

Disease

Arctic grayling are resistant to whirling disease, which is responsible for population-level declines of other stream salmonids (Hedrick *et al.* 1999, pp. 330, 333). However, Arctic grayling are susceptible to bacterial kidney disease (BKD). Some wild populations in pristine habitats test positive for BKD (Meyers *et al.* 1993, pp. 186–187), but clinical effects of the disease are more likely to be evident in captive populations (Meyers *et al.* 1993, entire; Peterson 1997, entire). To preclude transmission of BKD between grayling during brood reserve, hatchery, and wild grayling translocation efforts, MFWP tests kidney tissue and ovarian fluid for the causative agent for BKD as well as other pathogens in brood populations (Rens and Magee 2007, pp. 22–24).

Information on the prevalence of the BKD or other diseases in native Arctic grayling populations in Montana is generally lacking. One reason is that some disease assays are invasive or require the sacrifice of individual fish (e.g., removal of kidney tissue to test for BKD pathogen.) Therefore, such testing is typically avoided in native populations of Missouri River Arctic grayling that are low in abundance. Arctic grayling in captive brood reserves (e.g., Axolotl Lake, Green Hollow Lake) and introduced populations (e.g., Sunnyslope Canal, Rogers Lake) have all tested negative for infectious hematopoietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), *Myxobolus cerebralis* (the pathogen that causes whirling disease), *Renibacterium salmoninarum* (the pathogen that causes BKD), and *Aeromonas salmonicida* (the pathogen that causes furunculosis) (USFWS 2010a). Consequently, we have no evidence at this time that disease threatens native Arctic grayling of the upper Missouri River. We have no basis to conclude that disease will become a future threat, so we conclude that disease does not constitute a threat in the foreseeable future.

Predation By and Competition With Nonnative Trout

Brook trout (*Salvelinus fontinalis*), brown trout (*Salmo trutta*), and rainbow trout have been introduced across the United States to provide recreational fishing opportunities, and are now widely distributed and abundant in the western United States, including the upper Missouri River system (Schade and Bonar 2005, p. 1386). One or more of these nonnative trout species co-occur with every native Arctic grayling population in the basin. Ecological interactions (predation and competition) with the brook trout, brown trout, and rainbow trout are among the long-standing hypotheses to explain decline of Arctic grayling in the upper Missouri River system and the extirpation of populations from specific waters (Nelson 1954, p. 327; Vincent 1962, pp. 81–96; Kaya 1992, pp. 55–56).

The potential for interspecific interactions should be greatest among species with similar life histories and ecologies that did not co-evolve (Fausch and White 1986, p. 364). Arctic grayling in the Missouri River basin have similar ecologies to brook trout, rainbow trout, and brown trout, yet they do not share a recent evolutionary history. The evidence for predation and competition by nonnative trout on Arctic grayling in the upper Missouri River basin is largely circumstantial, and inferred from the reduced abundance and distribution of Arctic grayling following encroachment by nonnative trout (Kaya 1990, pp. 52–54; Kaya 1992, p. 56; Magee and Byorth 1995, p. 54), as well as the difficulty in establishing Arctic grayling populations in waters already occupied by nonnative trout, especially brown trout (Kaya 2000, pp. 14–15). Presumably, competition with ecologically-similar species for food, shelter, and spawning locations can lead to reduced growth, reproduction, and survival of Arctic grayling (i.e., where they are outcompeted by nonnative trout). The strength of competition is very difficult to measure in wild trout populations (Fausch 1988, pp. 2238, 2243; 1998, pp. 220, 227). Few studies have evaluated competition between Arctic grayling and these nonnative species. Brook trout do not appear to negatively affect habitat use or growth of juvenile, hatchery-reared Arctic grayling (Byorth and Magee 1998, p. 921), but further studies are necessary to determine whether competition or predation occur at other life stages or with brown or rainbow trout (Byorth and Magee 1998, p. 929).

Predation represents direct mortality that can limit populations, and YOY Arctic grayling may be particularly susceptible to predation by other fishes because they are smaller and weaker swimmers than trout fry (Kaya 1990, pp. 52–53).

The incidence of competition and predation between nonnative trout and Arctic grayling likely depends on environmental context (e.g., habitat type and quality, environmental conditions such as temperature, and so forth). Nonetheless, it is widely accepted that biotic interactions with nonnative species are to some extent responsible for the decline of many native fishes in the western United States (Dunham *et al.* 2002, pp. 373–374 and references therein; Fausch *et al.* 2006, pp. 9–11 and references therein).

In the Big Hole River, brook trout, rainbow trout, and brown trout have been established for some time (Kaya 1992, pp. 50–51) and are much more abundant than Arctic grayling (Rens and Magee 2007, p. 42). In general, brook trout is the most abundant nonnative trout species in the Big Hole River upstream from Wisdom, Montana (Rens and Magee 2007, pp. 7, 42; Lamothe *et al.* 2007, pp. 35–38), whereas rainbow trout and brown trout are comparatively more abundant in the reaches immediately above and downstream from the Divide Dam (Kaya 1992, p. 56; Oswald 2005b, pp. 22–29; Lamothe *et al.* 2007, pp. 35–38; Rens and Magee 2007, p. 10). Rainbow trout are apparently more abundant than brown trout above the Divide Dam (Olsen 2010, pers. comm.), but brown trout are more abundant than rainbow trout below the dam (Oswald 2005b, pp. 22–33). Recent observations of increased brown trout abundance and distribution in the upper Big Hole River indicate that the species may be encroaching further upstream (AGW 2008, p. 1). Overall, at least one nonnative species occurs in the

mainstem Big Hole River and tributary locations where Arctic grayling are present (Lamothe *et al.* 2007, p. 37; Rens and Magee 2007, p. 42). The Big Hole Grayling CCAA recognizes that the potential for competition with and predation by nonnative trout may limit the effectiveness of its conservation actions (MFWP *et al.* 2006, pp. 54–55).

The MFWP is the lead agency implementing the Big Hole Grayling CCAA under an agreement with the Service, and MFWP establishes fishing regulations for most waters in Montana. Different regulations may apply on NWR lands administered by the Service. The MFWP has agreed to continue catch-and-release regulations for Arctic grayling in the Big Hole River, to increase daily possession limits for nonnative brook trout (MFWP *et al.* 2006, p. 55; MFWP 2010, p. 52), and to consider whether additional management actions are necessary to address threats from nonnative trout based on recommendations of a technical committee of the AGW (MFWP *et al.* 2006, p. 55). However, we are not aware of data that shows angling regulations currently, or are expected to, reduce threats from brook trout. We also are not aware of any evaluations provided by the technical committee or of any additional management actions taken by MFWP to address potential threats from nonnative trout. Nonnative trout are widely distributed and abundant in the Big Hole River, and eradication may be impossible. The Big Hole Grayling CCAA focuses primarily on habitat-related threats (not nonnative trout), so we presume that nonnative trout will remain a threat to Arctic grayling for the foreseeable future.

Arctic grayling in Miner and Mussigbrod Lakes co-occur with one or more species of nonnative trout, but we have no quantitative information on the relative abundance of the introduced species. Brook trout and rainbow trout are both characterized as "common" in lower Miner Lakes (MFISH 2010), and brook trout in Mussigbrod Lake are similarly categorized as "common" (MFISH 2010). Brook trout have been present in the Big Hole River for at least 60 years (Liknes 1981, p. 34). The date when brook trout were introduced into Miner and Mussibrod Lakes is unknown (Liknes 1981, p. 33), but the co-occurrence of the brook trout with Arctic grayling in these habitats suggests that displacement of Arctic grayling by brook trout is not inevitable.

In the Madison River in and near Ennis Reservoir, brown trout and rainbow trout are abundant and are the foundation of an important recreational fishery (e.g., Byorth and Shepard 1990, p. 1). Nonnative rainbow trout and brown trout substantially outnumber Arctic grayling in the Madison River near Ennis Reservoir (Clancey and Lohrenz 2005, pp. 26, 29–31; 2009, pp. 91, 93).

In the Red Rock Lakes system, brook trout and hybrid cutthroat trout (Yellowstone cutthroat trout (*Oncorhynchus clarkii bouvieri*) rainbow trout; Mogen 1996, p. 42) have well-established populations and dominate the abundance and biomass of the salmonid community (Katzman 1998, pp. 2–3; Boltz 2010, pp. 2–3). Competition and predation risk for the Arctic grayling may be particularly acute in the shallow Upper Red Rock Lake when all fish species are forced to congregate in a few discrete deeper sites in response to environmental conditions, such as ice formation in winter (Boltz 2010, pers. comm.). Removal of nonnative trout from certain waters on the Red Rock Lakes NWR is part of the CCP (USFWS 2009, pp. 72, 75), so the frequency of predation of and competition with Arctic grayling by these species may be reduced at a limited spatial scale during the 15–year timeframe of the CCP.

Studies attempting to specifically measure the strength of competition with and magnitude of predation by nonnative trout on Arctic grayling in Montana have yielded mixed results. Only one study attempted to measure competition between brook trout and Arctic grayling (Byorth and Magee 1998, entire), and their study did not find strong evidence for presumed effects of competition, such as differences in microhabitat use or growth rate (Byorth and Magee 1998, p. 1998). However, the authors cautioned that further studies were needed to determine whether or not competition may be occurring between fish of different sizes or ages (other than those tested) or whether competition with or predation by rainbow trout or brown trout is occurring (Byorth and Magee, 1998, p. 929). Measuring the strength of competition and determining the relevant mechanisms (e.g., competition for food vs. space) is difficult to measure in fish populations (Fausch 1998, pp. 220, 227), so the lack of definitive evidence for the mechanisms of competition may simply be due to the inherent difficulties in measuring these effects and determining their influence on the population. Similarly, predation by brook trout on Arctic grayling eggs and fry has been observed in both the Big Hole River and Red Rock Lakes systems (Nelson 1954, entire; Streu 1990, p. 17; Katzman 1998, pp. 35, 47, 114), but such observations have not been definitively linked with a population decline of Arctic grayling. To our knowledge, no studies have investigated or attempted to measure predation by brown trout or rainbow trout on Arctic grayling in Montana.

Experimental evidence notwithstanding, the decline of Arctic grayling concurrent with encroachment by nonnative trout, combined with the difficulty in establishing grayling populations where nonnatives trout are present (Kaya 1992, pp. 55–56, 61; Kaya 2000, pp. 14–16), provides strong circumstantial evidence that a combination of predation and competition by nonnative trout has negatively affected Arctic grayling populations in the upper Missouri River. The lack of direct evidence for competition (e.g., with brook trout) or predation (e.g., by brown trout) most likely indicates that these mechanisms can be difficult to detect and measure in wild populations and that additional scientific investigation is needed. We recognize that displacement of Arctic grayling is not a certain outcome where the species comes into contact with brook trout (e.g., Big Hole River), but the circumstances that facilitate long-term co-existence vs. transitory co-existence are unknown. Ultimately, circumstantial evidence from Montana and the western United States suggests that the presence of nonnative trout species represents a substantial threat to native fishes including Arctic grayling. At least one species of nonnative trout is present in all waters occupied by native Arctic grayling populations in the upper Missouri River, so the threat is widespread and imminent, and we expect that nonnative trout will remain a part of the biological community. Thus, we expect that nonnative trout are a threat to Missouri River Arctic grayling in the foreseeable future.

Predation by Birds and Mammals

In general, the incidence and effect of predation by birds and mammals on Arctic grayling is not well understood because few detailed studies have been completed (Northcote 1995, p. 163). Black bear (*Ursus americanus*), mink (*Neovison vison*), and river otter (*Lontra canadensis*) are present in southwestern Montana, but direct evidence of predatory activity by these species is often lacking (Kruse 1959, p. 348). Osprey (*Pandion halaietus*) can capture Arctic grayling during the summer (Kruse 1959, p. 348). In the Big Hole River, Byorth and Magee (1998, p. 926) attributed the loss of Arctic grayling from artificial enclosures used in a competition experiment to predation by minks, belted kingfisher (*Ceryl alcyon*),

osprey, and great blue heron (*Ardea herodia*). In addition, American white pelican (*Pelecanus erythrorhynchos*) are seasonally present in the Big Hole River, and they also may feed on grayling. The aforementioned mammals and birds can be effective fish predators, but we have no data demonstrating any of these species historically or currently consume Arctic grayling at levels sufficient to exert a measureable, population-level impact on native Arctic grayling in the upper Missouri River system. We expect the current situation to continue, so we conclude that predation by birds and mammals does not constitute a substantial threat to Missouri River Arctic grayling in the foreseeable future.

Summary of Factor C

Based on the information available at this time, we conclude disease does not represent a past or current threat to the Missouri River DPS of Arctic grayling. We have no factual basis for concluding that disease may become a future threat, but anticipate that the likelihood of disease in native populations will depend on and interact with other factors (e.g., habitat condition, climate change) that may cumulatively stress individual fish and reduce their ability to withstand infection by disease-causing pathogens.

Circumstantial evidence indicates that ecological interactions with nonnative trout species have led to the displacement of Arctic grayling from portions of its historic range in the upper Missouri River basin. Nonnative trout species, such as brook trout, brown trout, and rainbow trout, remain widely distributed and abundant in habitats currently occupied by native Arctic grayling populations. Consequently, we determined that the presence of nonnative trout represents a substantial current and foreseeable threat to native Arctic grayling of the upper Missouri River.

Little is known about the effect of predation on Arctic grayling by birds and mammals. Such predation likely does occur, but in contrast to the pattern of displacement observed concurrent with encroachment by nonnative trout, we are not aware of any situation where an increase in fish-eating birds or mammals has coincided with the decline of Arctic grayling. Consequently, the available information does not support a conclusion that predation by birds or mammals represents a substantial past, present, or foreseeable threat to native Arctic grayling in the upper Missouri River.

D. Inadequacy of Existing Regulatory Mechanisms

The ESA requires us to examine the adequacy of existing regulatory mechanisms with respect to those extant threats that place the species in danger of becoming either endangered or threatened. Thus, the scope of this analysis generally focuses on the extant native populations of Arctic grayling and potential current and foreseeable threats based on the inadequacy of existing regulatory mechanisms.

Federal Laws and Regulations

Native Arctic grayling are present in or adjacent to land managed by the U.S. Forest Service (USFS) (Big Hole River, Miner, and Mussigbrod Lakes: Beaverhead–Deerlodge National Forest), National Park Service (NPS) (Big Hole River: Big Hole National Battlefield), Bureau of Land Management (BLM) (Big Hole River: Dillon Resource Area), USFWS (Red Rock Lakes NWR); and the Federal Energy Regulatory Commission (Madison River–Ennis Reservoir: Ennis Dam, operated under Project 2188 license).

National Environmental Policy Act

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500–1518) state that, when preparing environmental impact statements, agencies shall include a discussion on the environmental impacts of the various project alternatives, any adverse environmental effects which cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR 1502). The NEPA itself is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for Arctic grayling as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by NEPA.

Federal Land Policy and Management Act

The BLM's Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*), as amended, states that the public lands shall be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.

The BLM considers the fluvial Arctic grayling a sensitive species requiring special management consideration for planning and environmental analysis (BLM 2009b, entire). The BLM has recently developed a Resource Management Plan (RMP) for the Dillon Field Office Area that provides guidance for the management of over 900,000 acres of public land administered by BLM in southwest Montana (BLM 2006a, p. 2). The Dillon RMP area thus includes the geographic area that contains the Big Hole, Miner, Mussigbrod, Madison River, and Red Rock populations of Arctic grayling. A RMP planning area encompasses all private, State, and Federal lands within a designated geographic area (BLM 2006a, p. 2), but the actual implementation of the RMP focuses on lands administered by the BLM that typically represent only a fraction of the total land area within that planning area (BLM 2006b, entire). Restoring Arctic grayling habitat and ensuring the long-term persistence of both fluvial and adfluvial ecotypes are among the RMP's goals (BLM 2006a, pp. 30–31). However, there is little actual overlap between the specific parcels of BLM land managed by the Dillon RMP and the current distribution of Arctic grayling (BLM 2006b, entire).

The BLM also has a RMP for the Butte Field Office Area, which includes more than 300,000 acres in south-central Montana (BLM 2008, entire), including portions of the Big Hole River in Deerlodge and Silver Bow counties (BLM 2008, p. 8; 2009c, entire). The Butte RMP considers conservation and management strategies and agreements for Arctic grayling in its planning process and includes a goal to opportunistically enhance or restore habitat for Arctic grayling (BLM 2008, pp. 10, 30, 36). However, the Butte RMP does not mandate specific actions to improve habitat for Arctic grayling in the Big Hole River.

National Forest Management Act

Under the USFS' National Forest Management Act (NFMA) of 1976, as amended (16 U.S.C. 1600–1614), the USFS shall strive to provide for a diversity of plant and animal communities when managing national forest lands. Individual national forests may identify species of concern that are significant to each forest's biodiversity. The USFS Northern Rocky Mountain Region (R1) considers fluvial Arctic grayling a sensitive species (USFS 2004, entire) for which population viability is a concern, as evidenced by a significant downward trend in population or a

significant downward trend in habitat capacity.

Much of the headwaters of the Big Hole River drainage are within the boundary of the Beaverhead–Deerlodge National Forest. The Miner and Mussigbrod Lakes Arctic grayling populations are entirely within Forest boundaries. The Beaverhead–Deerlodge National Forest is currently revising its forest plan. The USFS does not propose to designate key fish watersheds solely to benefit grayling, but fluvial Arctic grayling will remain a sensitive species with Forest-wide standards and objectives to meet the species' habitat requirements (USFS 2009a, p. 19). With respect to fluvial Arctic grayling, the USFS is proposing a Controlled Surface Use (CSU) stipulation in the Ruby River (an ongoing reintroduction site) and certain tributaries of the Big Hole River (USFS 2009b, pp. 29, B-13) to avoid impacts from mineral, gas, and oil extraction (USFS 2009b, pp. 27–28). These CSU stipulations define the minimum extent of buffer areas adjacent to streams. In general, the preferred forest plan alternative (Alternative 6, USFS 2009a, p. 6) is deemed by the USFS to provide management direction designed to ensure the persistence of grayling populations Forest-wide, and to meet viability requirements of this species (USFS 2009a, p. 146). The forest plan revision has not yet been finalized through a record of decision (ROD), so we are unable to specifically evaluate its potential effect on native Arctic grayling populations.

National Park Service Organic Act

The NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations ... to conserve the scenery and the national and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Native populations of Arctic grayling have been extirpated from Yellowstone National Park, but the Big Hole National Battlefield is adjacent to the North Fork of the Big Hole River (NPS 2006, entire), and Arctic grayling are occasionally encountered downstream from the Battlefield (Rens and Magee 2007, pp. 7, 13). Consequently, a very small amount of currently occupied grayling habitat is in the vicinity of lands managed by the NPS; therefore, the NPS Organic Act is not thought to have any significant effect on native Arctic grayling populations.

National Wildlife Refuge System Improvement Act of 1997

The National Wildlife Refuge Systems Improvement Act (NWRSIA) of 1997 (Pub. L. 105-57) amends the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd *et seq.*). The NWRSIA directs the Service to manage the Refuge System's lands and waters for conservation. The NWRSIA also requires monitoring of the status and trends of refuge fish, wildlife, and plants. The NWRSIA requires development of a Comprehensive Conservation Plan (CCP) for each refuge and management of each refuge consistent with its plan.

The Service has developed a final CCP to provide a foundation for the management and use of Red Rock Lakes NWR (USFWS 2009, entire). Red Rocks NWR is 2,033-2,865 m (6,670-9,400 ft) above sea level, comprises 48,955 ac, and lies east of the Continental Divide near the uppermost reach of the Missouri drainage (USFWS 2009, pp. v, 2). The Red Rocks NWR encompasses Lower and Upper Red Rock Lakes, which contain native grayling. The Red Rocks NWR CCP outlines a set of broad goals and specific objectives or strategies with respect to conservation of Arctic grayling that focuses on habitat improvements, reestablishment of populations, and removal of nonnative trout where necessary (USFWS 2009, pp. 67, 75–76). We expect that implementation of the CCP during the next 15 years will address a number of significant resource issues that affect grayling (e.g., riparian habitat condition, entrainment in irrigation ditches, increasing the extent of occupancy in the system). Nonetheless, actions similar to those planned inside the NWR will be needed on adjacent properties to reduce threats to the existing population of grayling in the Red Rock Lakes system.

Federal Power Act

The Federal Power Act of 1920 (16 U.S.C. 791-828c, as amended) provides the legal authority for the Federal Energy Regulatory Commission (FERC), as an independent agency, to regulate hydropower projects. In deciding whether to issue a license, FERC is required to give equal consideration to mitigation of damage to, and enhancement of, fish and wildlife (16 U.S.C. 797(e)). A number of FERC-licensed dams exist in the Missouri River basin in current (i.e., Ennis Dam on the Madison River) and historical Arctic grayling habitat (e.g., Hebgen Dam on the Madison River; Hauser, Holter, and Toston dams on the mainstem Missouri River; and Clark Canyon Dam on the Beaverhead River). The FERC license expiration dates for these dams range from 2024 (Toston) to 2059 (Clark Canyon) (FERC 2010, entire). None of these structures provide upstream passage of fish, and such dams are believed to be one of the primary factors leading to the decline of Arctic grayling in the Missouri River basin (see discussion under Factor A, above). Consequently, we conclude that historically the Federal Power Act has not adequately protected Arctic grayling or its habitat. We anticipate this will remain a threat it in the foreseeable future because of future expiration dates of the FERC-licensed dams in the upper Missouri River basin.

Clean Water Act

The Clean Water Act (CWA) of 1972 (33 U.S.C. 1251 *et seq.*) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The CWA's general goal is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. 1251 (a)). The CWA requires States to adopt standards for the protection of surface water quality and establishment of Total Maximum Daily Load (TMDL) guidelines for rivers. The Big Hole River has approved TMDL plans for its various reaches (MDEQ 2009a, entire; 2009b, entire); thus, complete implementation of this plan should improve water quality (by reducing water temperatures, and reducing sediment and nutrient inputs) in the Big Hole River in the foreseeable future. As of November 2009, the Red Rocks watershed was in the pre-TMDL planning and assessment phase, but there was no significant TMDL plan development activity in the Madison River (see MDEQ 2010). Consequently, implementation of the CWA through an EPA-approved TMDL plan began in 2009 for the Big Hole River watershed, but has yet to begin in other waters occupied by native Arctic grayling in the upper Missouri River. The CWA does not appear to be adequate to protect the Missouri River DPS of Arctic grayling, but implementation of TMDL plans should improve habitat conditions for Big Hole River grayling in the foreseeable future.

Montana State Laws and Regulations

Arctic grayling is considered a species of special concern by Montana, but this is not a statutory or regulatory classification (Montana Natural Heritage Program 2010).

State Comprehensive Wildlife Conservation Strategies

These strategies, while not State or national legislation, can help prioritize conservation actions within each State. Species and habitats named within each Comprehensive Wildlife Conservation Strategy (CWCS) may receive focused attention. The MFWP considers Arctic grayling as a Tier I conservation species under its CWCS and the Big Hole River also is a Tier I Aquatic Conservation Focus Area (Montana's Comprehensive Fish and Wildlife Conservation Strategy (MCFWCS) 2005, pp. 75–76).

Montana Environmental Policy Act

The legislature of Montana enacted the Montana Environmental Policy Act (MEPA) as a policy statement to encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the State, and to establish an environmental quality council (MCA 75-1-102). Part 1 of the MEPA establishes and declares Montana's environmental policy. Part 1 has no legal requirements, but the policy and purpose provide guidance in interpreting and applying statutes. Part 2 requires State agencies to carry out the policies in Part 1 through the use of systematic, interdisciplinary analysis of State actions that have an impact on the human environment. This is accomplished through the use of a deliberative, written environmental review. In practice, MEPA provides a basis for the adequate review of State actions in order to ensure that environmental concerns are fully considered (MCA 75-1-102). Similar to NEPA, the MEPA is largely a disclosure law and a decision-making tool that does not specifically require subsequent minimization or mitigation measures.

Laws Affecting Physical Aquatic Habitats

A number of Montana State laws have a permitting process applicable to projects that may affect stream beds, river banks, or floodplains. These include the Montana Stream Protection Act (SPA), the Streamside Management Zone Law (SMZL), and the Montana Natural Streambed and Land Preservation Act (Montana Department of Natural Resources (MDNRC) 2001, pp. 7.1–7.2). The SPA requires that a permit be obtained for any project that may affect the natural and existing shape and form of any stream or its banks or tributaries (MDNRC 2001, p. 7.1). The Montana Natural Streambed and Land Preservation Act (i.e., MNSLPA or 310 permit) requires private, nongovernmental entities to obtain a permit for any activity that physically alters or modifies the bed or banks of a perennially-flowing stream (MDNRC 2001, p. 7.1). The SPA and MNSLPA laws do not mandate any special recognition for species of concern, but in practice, biologists that review projects permitted under these laws usually stipulate restrictions to avoid harming such species (Horton 2010, pers. comm.). The SMZL regulates forest practices near streams (MDNRC 2001, p. 7.2). The Montana Pollutant Discharge Elimination System (MPDES) Stormwater Permit applies to all discharges to surface water or groundwater, including those related to construction, dewatering, suction dredges, and placer mining, as well as to construction that will disturb more than 1 acre within 100 ft (30.5 m) of streams, rivers, or lakes (MDNRC 2001, p. 7.2).

Review of applications by MFWP, MTDEQ, or MDNRC is required prior to issuance of permits under the above regulatory mechanisms (MDNRC 2001, pp. 7.1–7.2). Although these regulatory mechanisms would be expected to limit impacts to aquatic habitats in general, the decline of Arctic grayling in the Big Hole River, Madison River, and certain waters in the Red Rock Lakes system does not provide evidence that past implementation of these laws, regulations, and permitting processes has effectively limited impacts to Arctic grayling habitat. Thus, we have no basis for concluding that these same regulatory mechanisms are adequate to protect the Arctic grayling and its habitat now or in the foreseeable future.

Montana Water Use Act

The implementation of Montana Water Use Act (Title 85: Chapter 2, Montana Codes Annotated) may not adequately address threats to Arctic grayling in basins where the allocation of water rights exceeds the available water (overallocation) and the water rights holders fully execute their rights (i.e., use all water legally available for diversion). The Missouri River system is generally believed to be overappropriated, and water for additional consumptive uses is only available for a few months during very wet years (MDNRC 1997, p. 12). The Upper Missouri River basin and Madison River basin have been closed to new water appropriations because of water availability problems, overappropriation, and a concern for protecting existing water rights (MDNRC 2009, p. 45). In addition, recent compacts (a legal agreement between Montana, a Federal agency, or an Indian tribe determining the quantification of federally or tribally claimed water rights) have been signed that close appropriations in specific waters in or adjacent to Arctic grayling habitats. For example, the USFWS–Red Rock Lakes–Montana Compact includes a closure of appropriations for consumptive use in the drainage basins upstream of the most downstream point on the Red Rock Lakes NWR and the Red Rock Lakes Wilderness Area (MDNRC 2009, pp. 18, 47). The NPS–Montana Compact specifies that certain waters will be closed to new appropriations when the total appropriations reach a specified level, and it applies to Big Hole National Battlefield and adjacent waters (North Fork of the Big Hole River and its tributaries including Ruby and Trail Creeks), and the portion of Yellowstone National Park that is in Montana (MDNRC 2009, p. 48).

The State of Montana is currently engaged in a state-wide effort to adjudicate (finalize) water rights claimed before July 1, 1973. The final product of adjudication in a river basin is a final decree. To reach completion, a decree progresses through several stages: (1) Examination, (2) temporary preliminary decree, (3) preliminary decree, (4) public notice, (5) hearings, and (6) final decree (MDNRC 2009, pp. 9–14). As of February 2010, the Red Rock River system is currently being examined, and the Big Hole and Madison Rivers have temporary decrees (MDNRC 2010, entire). We anticipate the final adjudication of all the river basins in Montana that currently contain native Arctic grayling will be completed in the foreseeable future, but we do not know if this process will eliminate the overallocation of water rights.

Fishing Regulations

Arctic grayling is considered a game fish (MFWP 2010, p. 16), but is subject to special catch-and-release regulations in streams and rivers within its native range (MFWP 2010, p. 52). Catch-and-release regulations also are in effect for Ennis Reservoir on the Madison River (MFWP 2010, p. 61). Arctic grayling in Miner and Mussigbrod Lakes are subject to more liberal regulations; anglers can keep up to 5 per day and have up to 10 in possession in accordance with standard daily and possession limits for that angling management district

(MFWP 2010, p. 52). We have no evidence to indicate that current fishing regulations are inadequate to protect native Arctic grayling in the Missouri River basin (see discussion under Factor B, above).

Summary of Factor D

We infer that current Federal and State regulatory mechanisms are inadequate to protect native Arctic grayling of the upper Missouri River. We conclude this because the regulatory mechanisms may only apply to specific populations (or parts of populations) depending on land ownership and jurisdiction, they have no track record of addressing significant threats to habitat, and they do not address the threat posed by nonnative trout.

Regulatory mechanisms on Federal lands may be adequate to protect certain fragments of Arctic grayling habitat or isolated populations (e.g., Miner and Mussigbrod Lakes). However, the extirpation of more than one lake population within the Beaverhead–Deerlodge National Forest (e.g., Elk Lake – Oswald 2000, p. 10; Hamby Lake – Oswald 2005a, pers. comm.) suggests the existing regulatory mechanisms may not be sufficient. Difficulties in coordinating land and water use across jurisdictional boundaries (State, Federal, private) within a watershed also present challenges for coordinated management of Arctic grayling. In the Big Hole River, fluvial Arctic grayling generally occupy waters adjacent to private lands (MFWP *et al.* 2006, p. 13; Lamothe *et al.* 2007, p. 4), so Federal regulations may have limited scope to protect the species.

Conceivably, application of existing regulations concerning occupied Arctic grayling habitat in the upper Missouri River basin (e.g., CWA, FLPMA, NFMA, SMZL, SPA) should promote and ensure the persistence of Arctic grayling because these regulations were promulgated, to some extent, to limit impacts of human activity on the environment. However, based on the current status of the DPS and the degradation of habitat and declines in populations observed in the past 20 to 30 years, during which time many of the above regulatory mechanisms have been in place, we have no basis to conclude that they have adequately protected grayling up to this time. In other words, existing regulations theoretically limit threats to Arctic grayling, but in practice have not done so. We suspect that incomplete or inconsistent application of these regulatory mechanisms and jurisdictional difficulties (State vs. Federal regulations, private vs. public lands) relative to the distribution of Arctic grayling may be partially responsible. Other regulatory mechanisms simply require disclosure (e.g., NEPA) and do not necessarily mandate protection for a species or its habitat. Consequently, we believe that existing regulatory mechanisms that deal with land and water management have not demonstrably reduced threats to Arctic grayling in the past, and we have no basis to conclude that they are adequate now or will be in the future.

Existing regulatory mechanisms do not directly address threats posed by nonnative brook trout, brown trout, or rainbow trout (see Factor C discussion, above). One exception is that the Red Rock Lakes NWR CCP does consider removal of nonnative trout to be a possible action to benefit Arctic grayling, but this may not apply to occupied habitat outside the NWR, so the CCP is likely to only address this threat for a portion of the population.

For the reasons described above, we conclude that the inadequacy of existing regulatory mechanisms poses a current threat to native Arctic grayling of the upper Missouri River. We do not anticipate any changes to the existing regulatory mechanisms, thus we conclude that the inadequacy of existing regulatory mechanisms is a threat in the foreseeable future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Drought

Drought appears to be a significant natural factor that threatens Arctic grayling populations in streams and rivers in the upper Missouri River basin. Drought can affect fish populations by reducing stream flow volumes. This leads to dewatering and high temperatures that can limit connectivity among spawning, rearing, and sheltering habitats; to a reduced volume of thermally suitable habitat; and to an increased frequency of water temperatures above the physiological limits for optimum growth and survival in Arctic grayling. Drought is a natural occurrence in the interior western United States (see National Drought Mitigation Center 2010). The duration and severity of drought in Montana appears to have increased during the last 50 years, and precipitation has tended to be lower than average in the last 20 years (National Climatic Data Center 2010). In addition, drought can interact with human-caused stressors (e.g., irrigation withdrawals, riparian habitat degradation) to further reduce stream flows and increase water temperatures.

Reduced stream flows and elevated water temperatures during drought have been most apparent in the Big Hole River system (Magee and Lamothe 2003, pp. 10-14; Magee *et al.* 2005, pp. 23-25; Rens and Magee 2007, pp. 11-12, 14). Although the response of stream and river habitats to drought is expected to be most pronounced because of the strong seasonality of flows in those habitats, effects in lake environments do occur. For example, both the Upper and Lower Red Rock Lakes are very shallow (Mogen 1996, p. 7). Reduced water availability during drought would result in further shallowing (loss of habitat volume) that can lead to increased temperatures in summer and the likelihood of complete freezing or anoxia (lack of oxygen) in winter.

In the Big Hole River, evidence for the detrimental effects of drought on Arctic grayling populations is primarily inferential; observed declines in fluvial Arctic grayling and nonnative trout abundances in the Big Hole River coincide with periods of drought (Magee and Lamothe 2003, pp. 22–23, 28) and fish kills (Byorth 1995, pp. 10–11, 31). Similarly, lack of success with fluvial Arctic grayling restoration efforts elsewhere in the upper Missouri River basin also has been attributed, in part, to drought (Lamothe and Magee 2004a, p. 28).

Given the climate of the intermountain West, we conclude that drought has been and will continue to be a natural occurrence. We assume that negative effects of drought on Arctic grayling populations, such as reduced connectivity among habitats or increased water temperatures at or above physiological thresholds for growth and survival, are more frequent in stream and river environments and in very shallow lakes relative to larger, deeper lakes. Therefore, we expect the threat of drought to be most pronounced for Arctic grayling populations in the Big Hole River, Madison River–Ennis Reservoir, and Red Rock Lakes. We do not know whether drought has or is currently limiting Arctic grayling populations in Miner and Mussigbrod Lakes, as there are few monitoring data for these populations. Arctic grayling in Miner and Mussigbrod Lakes presumably use inlet or outlet streams for spawning; thus, if severe drought occurs during spawning and before subsequent emigration of YOY grayling to the rearing lakes, then population-level effects are possible. Overall, we conclude that drought has been a past threat, is a current threat, and will continue to be a threat to Arctic grayling of the upper Missouri River basin, especially for those populations in the

Big Hole River, Madison River–Ennis Reservoir, and Red Rock Lakes. Successful implementation of the Big Hole Grayling CCAA may partially ameliorate the effects of drought in the Big Hole River, by reducing the likelihood that human-influenced actions or outcomes (irrigation withdrawals, destruction of riparian habitats, and fish passage barriers) will interact with the natural effects of drought (reduced stream flows and increased water temperatures) to negatively affect suitable habitat for Arctic grayling. We expect the magnitude of the threat from drought to increase in the foreseeable future under the anticipated air temperature and precipitation trends projected by climate change models (discussed in detail below).

Climate Change

Climate is influenced primarily by long-term patterns in air temperature and precipitation. The Intergovernmental Panel on Climate Change (IPCC) has concluded that climate warming is unequivocal, and is now evident from observed increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global mean sea level (IPCC 2007, pp. 30–31). Continued greenhouse gas emissions at or above current rates are expected to cause further warming (IPCC 2007, p. 30). Eleven of the 12 years from 1995 through 2006 rank among the 12 warmest years in the instrumental record of global average near-surface temperature since 1850 (ISAB 2007, p.7; IPCC 2007, p. 30). During the last century, mean annual air temperature increased by approximately 0.6 °C (1.1 °F) (IPCC 2007, p. 30). Warming appears to be accelerating in recent decades, as the linear warming trend over the 50 years from 1956 to 2005 (average 0.13 °C or 0.24 °F per decade) is nearly twice that for the 100 years from 1906 to 2005 (IPCC 2007, p. 30). Climate change scenarios estimate that the mean air temperature could increase by over 3 °C (5.4 °F) by 2100 (IPCC 2007, pp. 45–46). The IPCC also projects that there will likely be regional increases in the frequency of hot extremes, heat waves, and heavy precipitation, as well as greater warming in high northern latitudes (IPCC 2007, p. 46). We recognize that there are scientific differences of opinion on many aspects of climate change, including the role of natural variability in climate. In our analysis, we rely primarily on synthesis documents (IPCC 2007; ISAB 2007; Karl *et al.* 2009) that present the consensus view of a large number of experts on climate change from around the world. We found that these synthesis reports, as well as the scientific papers used in those reports, or resulting from those reports, represent the best available scientific information we can use to inform our decision. Where possible, we used empirical data or projections specific to the western United States, which includes the range of Arctic grayling in the Missouri River basin, and focused on observed or expected effects on aquatic systems.

Water temperature and hydrology (stream flow) are sensitive to climate change, and influence many of the basic physical and biological processes in aquatic systems. For ectothermic organisms like fish, temperature sets basic constraints on species' distribution and physiological performance, such as activity and growth (Coutant 1999, pp. 32–52). Stream hydrology not only affects the structure of aquatic systems across space and time, but influences the life-history and phenology (timing of life-cycle events) of aquatic organisms, such as fishes. For example, the timing of snowmelt runoff can be an environmental cue that triggers spawning migrations in salmonid fishes (Brenkman *et al.* 2001, pp. 981, 984), and the timing of floods relative to spawning and emergence can strongly affect population establishment and persistence (Fausch *et al.* 2001, pp. 1438, 1450). Significant trends in water temperature and stream flow have been observed in the western United States (Stewart *et al.* 2005, entire; Kaushal *et al.* 2010, entire), and climatic forcing caused by increased air temperatures and changes in precipitation are partially responsible.

Warming patterns in the western United States are not limited to streams. In California and Nevada, water surface temperatures have increased by an average of 0.11 °C (0.2 °F) per year since 1992 and at a rate twice that of the average minimum air surface temperature (Schneider *et al.* 2009, p. L22402). In the western United States, runoff from snowmelt occurs 1 to 4 weeks earlier (Regonda *et al.* 2005, p. 380; Stewart *et al.* 2005, pp. 1136, 1141; Hamlett *et al.* 2007, p. 1468), presumably as a result of increased temperatures (Hamlet *et al.* 2007, p. 1468), increased frequency of melting (Mote *et al.* 2005, p. 45), and decreased snowpack (Mote *et al.* 2005, p. 41).

Trends in decreased water availability also are apparent across the Pacific Northwest. For example, Luce and Holden (2009, entire) found a tendency toward more extreme droughts at 72 percent of the stream flow gages they examined across Idaho, Montana, Oregon, and Washington.

Climate forcing may be directly or indirectly altering those habitats. Long-term water temperature data are not available for sites currently occupied by native Arctic grayling populations (e.g., Big Hole River, Red Rock Creek); however, if trends in air temperature are consistently related to increases in water temperature (Isaak *et al.* 2010, p. 1), then a regional pattern of increased water temperature is likely, and it is reasonable to assume that Arctic grayling in the Big Hole River, Red Rock Creek, and Madison River near Ennis Reservoir also have experienced the same trend. Mean annual air temperature recorded at Lakeview, Montana, near the Red Rock Lakes between 1948 and 2005 did not increase significantly, although mean temperatures in March and April did show a statistically significant increase consistent with earlier spring warming observed elsewhere in North America during recent decades (USFWS 2009, pp. 36–39).

The effect of such warming would be similar to that described for increased temperatures associated with stream dewatering (see discussion under Factor A), namely there has been an increased frequency of high water temperatures that may be above the physiological limits for survival or optimal growth for Arctic grayling, which is considered a cold-water (stenothermic) species (Selong *et al.* 2001, p. 1032). Changes in water temperature also may influence the distribution of nonnative trout species (Rahel and Olden 2008, p. 524) and the outcome of competitive interactions between those species and Arctic grayling. Brown trout are generally considered to be more tolerant of warm water than many salmonid species common in western North America (Coutant 1999, pp. 52–53; Selong *et al.* 2001, p. 1032), and higher water temperatures may favor brown trout where they compete against salmonids with lower thermal tolerances (Rahel and Olden 2008, p. 524). Recently observed increases in the abundance and distribution of brown trout in the upper reaches of the Big Hole River may be consistent with the hypothesis that stream warming is facilitating encroachment. Further study is needed to evaluate this hypothesis.

Observations on flow timing in the Big Hole River, upper Madison River, and Red Rock Creek indicate a tendency toward earlier snowmelt runoff (USFWS 2010b). These hydrologic alterations may be biologically significant for Arctic grayling in the Missouri River basin because they typically spawn

prior to the peak of snowmelt runoff (Shepard and Oswald 1989, p. 7; Mogen 1996, pp. 22–23; Rens and Magee 2007, pp. 6–7). A trend toward earlier snowmelt runoff could thus result in earlier average spawning dates, with potential (and presently unknown) implications for spawning success and growth and survival of fry. Water availability has measurably decreased in some watersheds occupied by Arctic grayling. For example, mean annual precipitation recorded at Lakeview, Montana, near the Red Rock Lakes, decreased significantly between 1948 and 2005 (USFWS 2009, pp. 36–39).

The western United States appears to be warming faster than the global average. In the Pacific Northwest, regionally averaged temperatures have risen 0.8 °C (1.5 °F) over the last century and as much as 2 °C (4 °F) in some areas. They are projected to increase by another 1.5 to 5.5 °C (3 to 10 °F) over the next 100 years (Karl *et al.* 2009, p. 135). For the purposes of this finding, we consider the foreseeable future for anticipated climate changes as approximately 40 years, because various global climate models (GCM) and emissions scenarios give consistent predictions within that timeframe (Ray *et al.* 2010, p. 11). We used a similar foreseeable future to consider climate change projects in other 12–month findings (see American pika (*Ochotona princeps)* – 75 FR 6448, February 9, 2010). While projected patterns of warming across North America are generally consistent across different GCMs and emissions scenarios (Ray *et al.* 2010, p. 22), there tends to be less agreement among models for whether mean annual precipitation will increase or decrease, but the models seem to indicate an increase in precipitation in winter and a decrease in summer (Ray *et al.* 2010, pp. 22–23). In the foreseeable future, natural variation will likely confound a clear prediction for precipitation based on current climate models (Ray *et al.* 2010, p. 29). Although there is considerable uncertainty about how climate will evolve at any specific location, statistically downscaled climate projection models (models that predict climate at finer spatial resolution than GCMs) for the Pacific Northwest also support widespread warming, with warmer temperature zones shifting to the north and upward in elevation (Ray *et al.* 2010, pp. 23–24).

The land area of the upper Missouri River basin also is predicted to warm (Ray *et al.* 2010, p. 23), although currently occupied Arctic grayling habitat tends be in colder areas of moderate-to-high elevation. Four out of five populations are at approximately 1,775 to 2,125 m (5,860 to 7,012 ft) (Peterson and Ardren 2009, p. 1761). Presumably, any existing trends in water temperature increase and earlier snowmelt runoff in streams and rivers that is being forced by increases in air temperature should continue. To the extent that these trends in water temperature and hydrology already exist in habitats occupied by native Arctic grayling, they should continue into the foreseeable future. In general, climate change is expected to substantially reduce the thermally suitable habitat for coldwater fish species (Keleher and Rahel 1996, pp. 1, 6–11; Mohseni *et al.* 2003, pp. 389, 401; Flebbe *et al.* 2006, p. 1371, 1378; Rieman *et al.* 2007, pp. 1552, 1559). The range of native Arctic grayling in the upper Missouri River has already contracted significantly during the past 50 to 100 years (Vincent 1962, pp. 96–121; Kaya 1992, pp. 49–51). The currently occupied native Arctic grayling habitat tends be in colder areas of moderate-to-high elevation that may, to some extent, be more resistant to large or rapid changes in hydrology (Regonda *et al.* 2005, p. 380; Stewart *et al.* 2005, p. 1142) or perhaps stream warming.

Nonetheless, we do not expect these habitats to be entirely immune from effects of climate warming, so we expect that climate change could lead to further range contractions of Arctic grayling of the upper Missouri River and may increase the species' risk of extinction over the next 30 to 40 years as climate impacts interact with existing stressors (Karl *et al.* 2009, p. 81), such as habitat degradation, stream dewatering, drought, and interactions with nonnative trout that are already affecting the DPS. We anticipate that implementation of the Big Hole Grayling CCAA may partially compensate for, or reduce the severity of, likely effects of climate change on Arctic grayling in the Big Hole River. However, if current projections are realized, climate change is likely to exacerbate the existing primary threats to Arctic grayling outside the Big Hole River. The IPCC projects that the changes to the global climate system in the 21st century will likely be greater than those observed in the 20th century (IPCC 2007, p. 45); therefore, we anticipate that these effects will continue and likely increase into the foreseeable future. We do not consider climate change in and of itself to be a significant factor in our determination of whether Arctic grayling of the upper Missouri River is warranted for listing because of the greater imminence and magnitude of other threats (e.g., Factor A: habitat degradation, Factor C: nonnative trout). However, we expect the severity and scope of key threats (habitat degradation and fragmentation, stream dewatering, and nonnative trout) to increase in the foreseeable future because of climate change effects that are already measureable (i.e., increased water temperature, increased frequency of extreme drought, changes in runoff patterns). Thus, we consider that climate change will potentially intensify some of the significant current threats to all Arctic grayling populations in the DPS. After approximately 40 years, the variation in GCM projections based on the various emissions scenarios begins to increase dramatically (Ray *et al.* 2010 pp. 12–13), so 40 years represents the foreseeable future in terms of the extent to which the effects of climate change (a major environmental driver) can reliably be modeled or predicted. Thus we conclude that climate change constitutes a threat in the Missouri DPS of Arctic grayling in the foreseeable future.

Stochastic (Random) Threats

A principle of conservation biology is that the presence of larger and more productive (resilient) populations can reduce overall extinction risk. To minimize extinction risk due to (random) stochastic threats, life-history diversity should be maintained, populations should not all share common catastrophic risks, and both widespread and spatially close populations are needed (Fausch *et al.* 2006, p. 23; Allendorf *et al.* 1997, entire). Based on these principles, the upper Missouri River DPS of Arctic grayling may face current and future threats from stochastic processes that act on small, reproductively isolated populations.

The upper Missouri River DPS of Arctic grayling exists as a collection of small, isolated populations (Figure 2; Peterson and Ardren 2009, entire). Patterns of dispersal among extant Arctic grayling populations have been constrained dramatically by the presence of dams. The inability of fish to move between populations limits genetic exchange, the maintenance of local populations (demographic support; Hilderbrand 2003, p. 257), and recolonization of habitat fragments (reviewed by Fausch *et al.* 2006, pp. 8-9). Isolated populations cannot offset the random loss of genetic variation (Fausch *et al.* 2006, p. 8). This in turn can lead to loss of phenotypic variation and evolutionary potential (Allendorf and Ryman 2002, p. 54). Relative to the presumed historical condition of

connectivity among most of the major rivers in the upper Missouri River basin, the extant native Arctic grayling populations face both genetic and demographic threats from isolation, both currently and in the foreseeable future.

Four of the five individual populations in the upper Missouri River DPS of Arctic grayling are at low-to-moderate abundance (see Population Status and Trends for Native Arctic Grayling of the Upper Missouri River, above). Individually, small populations need to maintain enough adults to minimize loss of variability through genetic drift and inbreeding (Rieman and McIntyre 1993, pp. 10–11). The point estimates for genetic effective population sizes observed in the Big Hole River, Miner Lakes, Madison River, and Red Rock Lakes populations are above the level at which inbreeding is an immediate concern, but below the level presumed to provide the genetic variation necessary to conserve long-term adaptive potential (Peterson and Ardren 2009, pp. 1767, 1769). Historically, effective population sizes of Arctic grayling in the Missouri River were estimated to be 1 or 2 orders of magnitude greater (10 to 100 times) than those currently observed (Peterson and Ardren 2009, pp. 1767). Loss of genetic variation relative to the historical condition thus represents a threat to Arctic grayling in the foreseeable future.

Only the Big Hole River population expresses the migratory fluvial ecotype that presumably dominated in the upper Missouri River basin (Kaya 1992, pp. 47–50); therefore, the DPS lacks functional redundancy in ecotypes. Conservation of life-history diversity is important to the persistence of species confronted by habitat change and environmental perturbations (Beechie *et al.* 2006, entire). Therefore, the lack of additional fluvial populations represents a current threat to the upper Missouri River DPS. Reintroduction efforts have been ongoing to reduce this threat, but have not yet produced a self-sustaining population at any of the reintroduction sites (Rens and Magee 2007, pp. 21–38). Future successful reintroductions may reduce this threat, but at the present time we consider the threat to extend into the foreseeable future.

Populations of Arctic grayling in the upper Missouri River DPS are for the most part widely separated from one another, particularly those populations in the Big Hole, Madison, and Red Rock drainages (see Figure 2). Thus, they do not appear to all share a common risk of being extirpated by a rare, high-magnitude environmental disturbance (i.e., catastrophe). Three of the five populations are within the same watershed (Big Hole River, Miner Lakes, and Mussigbrod Lake populations), so collectively these three populations would be at greater risk. Individually, each population appears to be at substantial risk of extirpation by catastrophe from one or more factor, such as restricted distribution (Miner Lakes, Mussigbrod Lake), low population abundance (Madison Lake, Red Rocks Lakes , Big Hole River), and concentration of spawning primarily in a single, discrete location (Red Rock Lakes). The Big Hole River population may be at a comparatively lower risk from catastrophe because individuals still spawn at multiple locations within the drainage (Rens and Magee 2007, p. 13).

The population viability analysis (PVA) demonstrates that four of the five extant populations in the upper Missouri River DPS of Arctic grayling are at moderate (at least 13 percent) to high risk (more than 50 percent) of extinction from random environmental variation. In this context, random environmental variation is simply considered to be common environmental fluctuations, such as drought, floods, debris flows, changes in food availability, etc. that affect population size and population growth. These PVA analyses assume that variation in annual population growth increases as population size decreases (Rieman and McIntyre 1993, pp. 43–46), which seems a reasonable assumption given the large inter-annual variability in relative abundance and recruitment observed in some Arctic grayling populations in Montana (e.g., Big Hole River) (Magee *et al.* 2005, pp. 27–28). Simply stated, smaller populations are more likely to go extinct even if they are stable because they are already close to the extinction threshold, and random environmental events can drive their abundance below that threshold. Consequently, we believe that extinction risk from random environmental variation (droughts, floods, etc.) represents a significant threat in the foreseeable future based on the PVA.

We are unsure whether chance variation in the fates of individuals within a given year (demographic stochasticity) is a current threat to the upper Missouri River DPS of Arctic grayling. The magnitude of demographic stochasticity is inversely related to population size (Morris and Doak 2002, pp. 22–23), but we do not know whether any of the Arctic grayling populations currently exist at or below an abundance where demographic stochasticity is likely.

Overall, we conclude that the upper Missouri River DPS of Arctic grayling faces threats from population isolation, loss of genetic diversity, and small population size, which all interact to increase the likelihood that random environmental variation or a catastrophe can extirpate an individual population. The uncertainty of PVA predictions increases dramatically after about 25 to 30 years, so we feel this represents a foreseeable future in terms of stochastic threats to the DPS. Lack of connectivity among extant populations and lack of replicate populations for the fluvial ecotype represent current threats. Threats from reduced genetic diversity, environmental variation, or catastrophe are threats in the foreseeable future, because their effects may take longer to play out (i.e., link between genetic diversity and adaptation) and are based on probabilistic inference concerning the magnitude of variation in population growth, environmental fluctuation, and periodic disturbance.

Summary of Factor E

Based on the information available at this time, we conclude that drought represents a current and future threat to native Arctic grayling in the upper Missouri River system. Drought can affect fish populations by reducing stream flow volumes, which leads to dewatering and high temperatures that can limit connectivity among spawning, rearing, and sheltering habitats; a reduced volume of thermally suitable habitat; and an increased frequency of water temperatures above the physiological limits for optimum growth and survival.

Climate projections suggest that the frequency and severity of drought is expected to increase; thus the magnitude of drought-related threats and impacts also may increase. We anticipate the effects of drought to be most pronounced in streams, rivers, and shallow lakes; therefore, the Big Hole River, Madison River–Ennis Reservoir, and Red Rock Lakes populations are likely to be most threatened by drought. There is evidence for increasing air temperatures and changing hydrologic pattern resulting from climate change in the Pacific Northwest and intermountain West, and we conclude that climate change is a secondary threat that can interact with and magnify the effects of primary threats, such as drought, stream dewatering from irrigation withdrawals, and the outcome of interactions with nonnative trout species that have higher thermal tolerances. We anticipate that climate

change will remain a threat in the foreseeable future, but that conservation programs that increase connectivity among refuge habitats and improve stream flows (e.g., Big Hole Grayling CCAA) will to some extent mitigate or lessen the effects of climate change. Climate change effects should be most pronounced in those same habitats and populations most strongly affected by water availability (Big Hole River, Madison River–Ennis Reservoir, Red Rock Lakes), but lake habitats also can be affected (Schneider *et al.* 2009, entire), so threats likely extend to the other populations in the DPS (Miner and Mussigbrod Lakes).

The Missouri River DPS of Arctic grayling currently exists as a collection of small, isolated populations that face some current and foreseeable threats from a collection of random (stochastic) processes characteristic of small populations, such as loss of genetic diversity because of habitat fragmentation and isolation, and individual populations face increased risk of extirpation from random environmental variation (results of PVA) and catastrophe.

Finding

As defined by the DPS Policy, we determined that the native Arctic grayling of the upper Missouri River constitutes a listable entity under the ESA. We also considered the appropriateness of listing separate distinct population segments based on each of the ecotypes (fluvial and adfluvial) that occur naturally in Arctic grayling populations in the Missouri River basin. The best scientific information indicates these ecotypes share a recent evolutionary history and the populations do not cluster genetically by life-history type. Maintaining life-history diversity increases the likelihood that a species (or DPS) will maintain both the genetic diversity and evolutionary flexibility to deal with future environmental challenges. Consequently we feel that preservation of both native ecotypes in their native habitats is essential to conservation of the DPS; thus we have determined that a single DPS that includes both ecotypes is most appropriate from both a practical management and conservation perspective. We refer to this DPS as the Missouri River DPS of Arctic grayling. As discussed above, we do not include the nonnative Arctic grayling in the DPS, based on intent of the Act, IUCN guidelines, and NMFS policy. The Service does not currently have a specific policy concerning nonnative species, therefore we will investigate this topic in more detail during the proposed rulemaking process.

As required by the ESA, we considered the five factors in assessing whether the Missouri River DPS of Arctic grayling is endangered or threatened throughout all or a significant portion of its range. We carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the DPS. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized species experts and other Federal, State, and tribal agencies. On the basis of the best scientific and commercial information available, we find that listing the DPS as endangered or threatened is warranted. We will make a determination on the status of the species as endangered or threatened when we do a proposed listing determination. However, as explained in more detail below (see **Preclusion and Expeditious Progress** section), an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

The historical range of Arctic grayling in the upper Missouri River basin has declined dramatically in the past century. The five remaining indigenous populations are isolated from one another by dams or other factors. Moreover, three of these five populations (Big Hole, Madison–Ennis, Red Rocks) appear to be at low abundance (perhaps no more than 650 to 2,000 adults per population) and have declined in abundance during the past few decades. The Big Hole River contains the only remaining example of the fluvial ecotype in the DPS, and the effective number of breeding adults declined by half during the past 15 years. Populations of Arctic grayling in two small lakes in the Big Hole River drainage (Miner and Mussigbrod) appear to be more abundant, and perhaps more secure than the other native populations.

This status review identified threats to the DPS related to Factors A, C, D, and E (see Table 5). All populations face potential threats from competition with and predation by nonnative trout (Factor C) now and in the foreseeable future. The magnitude of this threat likely varies by Arctic grayling population, and is greater in locations where multiple species of nonnative trout are present, abundant, and comprise a large proportion of the salmonid biomass (e.g., Big Hole River, Madison River–Ennis Reservoir, Red Rock Lakes). Most populations face threats that result from the alteration of their habitats (Factor A), such as habitat fragmentation from large dams or smaller irrigation diversion structures, stream dewatering, high summer water temperatures, loss of riparian habitats, and entrainment in irrigation ditches (see Table 5). Severe drought (Factor E) likely affects all populations by reducing water availability and reducing the extent of thermally suitable habitat, but we presume the effects of drought are most pronounced for Arctic grayling that reside primarily in streams and rivers (Big Hole River) or shallow lakes (Madison River–Ennis Reservoir, Red Rock Lakes). We did not consider climate change (Factor E) in and of itself to be a significant current threat, but if current climate changes projections are realized, we expect that climate change will influence severity and scope of key threats (habitat degradation and fragmentation, stream dewatering, interactions with nonnative trout, drought). As applied, existing regulatory mechanisms (Factor D) do not appear to be adequate to address primary threats to grayling (e.g., stream dewatering, loss of riparian habitats), as at least three native Arctic grayling populations have continued to decline in abundance in recent decades.

TABLE 5. CURRENT AND FORESEEABLE THREATS TO INDIVIDUAL POPULATIONS OF NATIVE ARCTIC GRAYLING IN THE UPPER MISSOURI RIVER DPS.

Threat Factor	Big Hole River	Miner Lakes	Mussigbrod Lake	Madison River–Ennis Reservoir	Red Rocks Lakes
A	Dams/habitat fragmentation[a] Dewatering[a] Thermal stress[a] Entrainment[a] Riparian habitat loss[a]		Dams/habitat fragmentation	Dams/habitat fragmentation Thermal stress	Dams/habitat fragmentation Dewatering Thermal stress Entrainment Riparian habitat loss Sediments
C	Predation & competition with nonnative trout	Predation & competition with nonnative trout	Predation & competition with nonnative trout	Predation & competition with nonnative trout	Predation & competition with nonnative trout
D	Inadequate regulations[b] (nonnative trout, continued population decline)	Inadequate regulations[b] (nonnative trout, extirpation of other lake populations of grayling)	Inadequate regulations[b] (nonnative trout, extirpation of other lake populations of grayling)	Inadequate regulations[b] (nonnative trout, federally-permitted dam, continued population decline)	Inadequate regulations[b] (nonnative trout, continued population decline)
E	Reduced genetic diversity, low abundance, random events Drought Climate change[c] No replicate of fluvial ecotype	Reduced genetic diversity, low abundance, random events Drought Climate change[c]	Drought Climate change[c]	Reduced genetic diversity, low abundance, random events Drought Climate change[c]	Reduced genetic diversity, low abundance, random events Drought Climate change[c]

[a] The magnitude of current threats to the majority of the extant population or its habitat are expected be reduced in the foreseeable future from implementation of a formalized conservation plan (i.e., Big Hole Grayling CCAA).
[b] Terms in parenthesis characterize the inadequacy of the regulatory mechanisms in terms of not addressing specific threats (e.g., nonnative trout, Factor C; dams, Factor A) or having no observed record of success with protecting existing populations (continued population decline, extirpation of other similarly situated populations).
[c] Threats believed to be of secondary importance or that interact with primary threats.

In the Big Hole River, ongoing implementation of a formalized conservation program (Big Hole Grayling CCAA) with substantial participation from non-Federal landowners and State and Federal agency partners should significantly reduce many of the habitat-related threats to that population in the foreseeable future. In the Red Rock Lakes NWR, implementation of a CCP should reduce many of the primary threats to Arctic grayling that occur within the NWR's boundary, but threats to Arctic grayling and its habitat also exist outside the administrative boundary of the CCP.

Four of five populations appear to be at risk of extirpation in the foreseeable future (next 20 to 30 years) from random fluctuations in environmental conditions (e.g., precipitation, food availability, density of competitors, etc.), simply because they are at low abundance and cannot receive demographic support from other native populations (Factor E). Low abundance and isolation also raises concerns that the loss of genetic variation from chance events (genetic drift) also may be a threat in some populations. Maintaining life-history diversity is important for species conservation given anticipated environmental challenges such as those anticipated under climate change, so having only a single population of the fluvial ecotype represents a significant threat to that ecotype's long-term persistence. A reintroduction program designed to address this threat has been implemented for more than a decade and has made some recent technical advances in the production of Arctic grayling fry. Natural reproduction by grayling has been observed at a re-introduction site in the Ruby River. At least 5 to 10 more years of monitoring is needed for us to establish that the reintroduced fish in the Ruby River constitute a viable population.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the ESA is warranted. We determined that issuing an emergency regulation temporarily listing the DPS is not warranted at this time because there are five populations in the DPS and the probability of simultaneous extinction of all five populations is low, as the populations are physically discrete and isolated from one another such that a natural or human-caused catastrophe is not likely to extirpate all populations at once. In addition, the remaining population that expresses the fluvial ecotype (Big Hole River) is subject to ongoing implementation of a formalized conservation agreement (Big Hole Grayling CCAA) with adaptive management stipulations if Arctic grayling population goals are not being met (MFWP *et al.* 2006, pp. 60–61), and provisions to rescue Arctic grayling or address alteration to habitat in the event of a large-magnitude disturbance such as a debris flow or flood (MFWP 2006, pp. 85–86).

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to

monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we assigned the native Arctic grayling of the upper Missouri River a Listing Priority Number (LPN) of 3 based on our finding that the DPS faces threats that are of high magnitude and are imminent. These primary threats include the present or threatened destruction, modification, or curtailment of its habitat; competition with and predation by nonnative trout; inadequacy of existing regulatory mechanisms to address all threats; extinction risk from small population size and isolation; drought; and lack of replication of the fluvial life history.

Under the Service's guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that the native Arctic grayling of the upper Missouri River faces to be high in magnitude because many of the threats that we analyzed are present throughout the range and currently impact the DPS to varying degrees (e.g., habitat fragmentation, nonnative trout, inadequate regulatory mechanisms), and will continue to impact the DPS into the future. The threats that are of high magnitude include present or threatened destruction, modification, or curtailment of its habitat; competition with and predation by nonnative trout; inadequacy of existing regulatory mechanisms to address all threats; extinction risk from small population size and isolation and vulnerability to catastrophes; drought; and lack of replication of the fluvial life-history. Also, the small number (five) and size and isolation of the populations may magnify the impact of the other threats under Factors A and C.

The DPS consists of only five populations, so loss of any individual population would incrementally increase the risk that the DPS will not persist. However, we presume that loss of the Big Hole River population would create the highest risk, as this population contains much of the genetic diversity present in the species within the Missouri River basin (Peterson and Ardren 2009, pp. 1763, 1768, 1770) and is the only example of the fluvial ecotype. A conservation program (Big Hole Grayling CCAA) is being implemented to address habitat-related threats to the Big Hole River population, but the scope of the threat posed by nonnative trout remains high. Due to the scope and scale of the high magnitude threats and current isolation of already small populations, we conclude that the magnitude of threats to native Arctic grayling of the upper Missouri River is high.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. Not all the threats facing the DPS are imminent. For example, threats from climate change and catastrophe are reasonably certain to occur, and their effects may be particularly acute for small, isolated populations, but the specific nature and influence of these effects, although ongoing, are uncertain at this point. With relative certainty, we can project that climate change effects will exacerbate other ongoing effects throughout the DPS. In contrast, we have factual information that some threats are imminent because we have factual information that the threats are identifiable and that the DPS is currently facing them in many areas of its range. These other threats are covered in detail in the discussions under Factors A and C of this finding and include habitat fragmentation, stream dewatering, and riparian degradation from agriculture and ranching; dams; and competition with and predation by nonnative trout. Therefore, based on our LPN Policy, the threats are imminent (ongoing).

The third criterion in our LPN guidelines is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. We determined the native Arctic grayling of the upper Missouri River to be a valid DPS according to our DPS Policy. Therefore, under our LPN guidance, the native Arctic grayling of the upper Missouri River is assigned a lower priority than a species in a monotypic genus or a full species that faces the same magnitude and imminence of threats. Therefore, we assigned the native Arctic grayling of the upper Missouri River an LPN of 3 based on our determination that the DPS faces threats that are overall of high magnitude and are imminent. An LPN of 3 is the highest priority that can be assigned to a distinct population segment. We will continue to monitor the threats to the native Arctic grayling of the upper Missouri River, and the DPS' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of LPN.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the ESA; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for

another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that FY. This cap was designed to prevent funds appropriated for other functions under the ESA (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107 - 103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a "warranted but precluded" finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise."

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing actions in FY 2010 to $11,585,417. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the ESA) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In 2009, the responsibility for listing foreign species under the ESA was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Starting in FY 2010, a portion of our funding is being used to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions, although there are currently no foreign species issues included in our high-priority listing actions at this time. The allocations for each specific listing action are identified in the Service's FY 2010 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: IUCN Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40 candidates, we are applying the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources also are a factor in

determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the ESA and implementing regulations.

We assigned the upper Missouri River DPS of Arctic grayling an LPN of 3, based on our finding that the DPS faces immediate and high magnitude threats from the present or threatened destruction, modification, or curtailment of its habitat; competition with and predation by nonnative trout; and the inadequacy of existing regulatory mechanisms. One or more of the threats discussed above occurs in each known population in the Missouri River basin. These threats are ongoing and, in some cases (e.g., nonnative species), considered irreversible. Under our 1983 Guidelines, a "species" facing imminent high-magnitude threats is assigned an LPN of 1, 2, or 3, depending on its taxonomic status. Work on a proposed listing determination for the upper Missouri River DPS of Arctic grayling is precluded by work on higher priority candidate species (i.e., species with LPN of 2); listing actions with absolute statutory, court ordered, or court-approved deadlines; and final listing determinations for those species that were proposed for listing with funds from previous FYs. This work includes all the actions listed in the tables below under expeditious progress.

As explained above, a determination that listing is warranted but precluded also must demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we also are making expeditious progress in removing species from the Lists under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2010 in the Listing Program. This progress included preparing and publishing the determinations presented in Table 6.

TABLE 6. FY2010 COMPLETED LISTING ACTIONS

Publication Date	Title	Actions	FR Pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range	Final Listing, Threatened	74 FR 52013-52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered	Notice of 90–day Petition Finding, Not Substantial	74 FR 55177-55180
10/28/2009	Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System	Notice of Intent to Conduct Status Review	74 FR 55524-55525
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the ESA: Proposed rule.	Proposed Listing Threatened	74 FR 56757-56770
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule	Proposed Listing Threatened	74 FR 56770-56791
11/23/2009	Status Review of Gunnison sage-grouse (*Centrocercus minimus*)	Notice of Intent to Conduct Status Review	74 FR 61100-61102
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 12–month Petition Finding, Not warranted	74 FR 63343-63366
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 63337-63343
12/15/2009	90-Day Finding on Petitions To List 9 Species of Mussels From Texas as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 66260-66271
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not Substantial & Substantial	74 FR 66865-66905
12/17/2009	12–month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico	Notice of 12–month Petition Finding, Warranted but Precluded	74 FR 66937-66950
01/05/2010	Listing Foreign Bird Species in Peru & Bolivia as Endangered Throughout Their Range	Proposed Listing, Endangered	75 FR 605-649

TABLE 6. FY2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
01/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed Listing, Endangered	75 FR 286-310
01/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, Withdrawal	75 FR 310-316
01/05/2010	Final Rule to List the Galapagos Petrel & Heinroth's Shearwater as Threatened Throughout Their Ranges	Final Listing, Threatened	75 FR 235-250
01/20/2010	Initiation of Status Review for *Agave eggersiana* & *Solanum conocarpum*	Notice of Intent to Conduct Status Review	75 FR 3190-3191
02/09/2010	12–month Finding on a Petition to List the American Pika as Threatened or Endangered	Notice of 12–month Petition Finding, Not Warranted	75 FR 6437-6471
02/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment	Notice of 12–month Petition Finding, Not Warranted	75 FR 8601-8621
02/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) as Threatened	Withdrawal of Proposed Rule to List	75 FR 8621-8644
03/18/2010	90-Day Finding on a Petition to List the Berry Cave salamander as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 13068-13071
03/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel (*Obovaria jacksoniana*) as Endangered or Threatened	Notice of 90–day Petition Finding, Not Substantial	75 FR 13717-13720
03/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened	Notice of 90–day Petition Finding, Substantial	75 FR 13720-13726
03/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered	Notice of 12–month Petition Finding, Warranted but Precluded	75 FR 13910-14014
03/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake (*Chionactis occipitalis klauberi*) as Threatened or Endangered with Critical Habitat	Notice of 12–month Petition Finding, Warranted but Precluded	75 FR 16050-16065
04/05/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 17062-17070
04/06/2010	12–month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened	Notice of 12–month Petition Finding, Not Warranted	75 FR 17352-17363
04/06/2010	90-Day Finding on a Petition to List a Stonefly (*Isoperla jewetti*) & a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Not Substantial	75 FR 17363-17367
04/07/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range	Notice of 12–month Petition Finding, Warranted but Precluded	75 FR 17667-17680
04/13/2010	Determination of Endangered Status for 48 Species on Kauai & Designation of Critical Habitat	Final Listing, Endangered	75 FR 18959-19165
04/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States	Notice of Initiation of Status Review	75 FR 19591-19592

TABLE 6. FY2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
04/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat	Notice of 12–month Petition Finding, Not Warranted	75 FR 19592-19607
04/16/2010	90-Day Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 19925-19935
04/20/2010	Initiation of Status Review for Sacramento splittail (*Pogonichthys macrolepidotus*)	Notice of Initiation of Status Review	75 FR 20547-20548
04/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 21568-21571
04/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered	Notice of 12–month Petition Finding, Not Warranted	75 FR 22012-22025
04/27/2010	90–day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 22063-22070
05/04/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 23654-23663
6/1/2010	90-Day Finding on a Petition To List Castanea pumila var. ozarkensis	Notice of 90–day Petition Finding, Substantial	75 FR 30313-30318
6/1/2010	12–month Finding on a Petition to List the White-tailed Prairie Dog as Endangered or Threatened	Notice of 12–month petition finding, Not warranted	75 FR 30338-30363
6/9/2010	90-Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered orThreatened.	Notice of 90–day Petition Finding, Substantial	75 FR 32728-32734
6/16/2010	90-Day Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 34077-34088
6/22/2010	12-Month Finding on a Petition to List the Least Chub as Threatened or Endangered	Notice of 12–month petition finding, Warranted but precluded	75 FR 35398-35424
6/23/2010	90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 35746-35751
6/23/2010	Listing Ipomopsis polyantha (*Pagosa Skyrocket*) as Endangered Throughout Its Range, and Listing *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia) as Threatened Throughout Their Range	Proposed Listing Endangered Proposed Listing Threatened	75 FR 35721-35746
6/24/2010	Listing the Flying Earwig Hawaiian Damselfly and Pacific Hawaiian Damselfly As Endangered Throughout Their Ranges	Final Listing Endangered	75 FR 35990-36012
6/24/2010	Listing the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace as Endangered Throughout Their Ranges	Proposed Listing Endangered	75 FR 36035-36057
6/29/2010	Listing the Mountain Plover as Threatened	Reinstatement of Proposed Listing Threatened	75 FR 37353-37358
7/20/2010	90-Day Finding on a Petition to List *Pinus albicaulis* (Whitebark Pine) as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 42033-42040

TABLE 6. FY2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
7/20/2010	12-Month Finding on a Petition to List the Amargosa Toad as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	75 FR 42040-42054
7/20/2010	90-Day Finding on a Petition to List the Giant Palouse Earthworm *(Driloleirus americanus)* as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	75 FR 42059-42066
7/27/2010	Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule	Final Listing Endangered	75 FR 43844-43853
7/27/2010	Final Rule to List the Medium Tree-Finch *(Camarhynchus pauper)* as Endangered Throughout Its Range	Final Listing Endangered	75 FR 43853-43864
8/3/2010	Determination of Threatened Status for Five Penguin Species	Final Listing Threatened	75 FR 45497- 45527
8/4/2010	90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 46894- 46898
8/10/2010	90-Day Finding on a Petition to List *Arctostaphylos franciscana* as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	75 FR 48294-48298
8/17/2010	Listing Three Foreign Bird Species from Latin America and the Caribbean as Endangered Throughout Their Range	Final Listing Endangered	75 FR 50813-50842
8/17/2010	90-Day Finding on a Petition to List Brian Head Mountainsnail as Endangered or Threatened with Critical Habitat	Notice of 90–day Petition Finding, Not substantial	75 FR 50739-50742
8/24/2010	90-Day Finding on a Petition to List the Oklahoma Grass Pink Orchid as Endangered or Threatened	Notice of 90–day Petition Finding, Substantial	75 FR 51969-51974

Our expeditious progress also includes work on listing actions that we funded in FY 2010 but have not yet been completed to date (Table 7). These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the ESA. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

TABLE 7. ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination
African penguin	Final listing determination
Flat-tailed horned lizard	Final listing determination
Mountain plover[4]	Final listing determination
6 Birds from Peru	Proposed listing determination
Sacramento splittail	12–month petition finding
Pacific walrus	12–month petition finding
Gunnison sage-grouse	12–month petition finding
Wolverine	12–month petition finding

TABLE 7. ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
Arctic grayling	12–month petition finding
Agave eggergsiana	12–month petition finding
Solanum conocarpum	12–month petition finding
Jemez Mountains salamander	12–month petition finding
Sprague's pipit	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Thorne's Hairstreak butterfly[4]	12–month petition finding
Hermes copper butterfly[4]	12–month petition finding
Actions with Statutory Deadlines	
Casey's june beetle	Final listing determination
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination
7 Bird species from Brazil	Final listing determination
Southern rockhopper penguin – Campbell Plateau population	Final listing determination
5 Bird species from Colombia and Ecuador	Final listing determination
Queen Charlotte goshawk	Final listing determination
5 species southeast fish (Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace)	Final listing determination
Salmon crested cockatoo	Proposed listing determination
CA golden trout	12–month petition finding
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Cactus ferruginous pygmy-owl[1]	12–month petition finding
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
Dusky tree vole	12–month petition finding
3 MT invertebrates (mist forestfly*(Lednia tumana*), *Oreohelix* sp.3, *Oreohelix* sp. 31) from 206 species petition	12–month petition finding
5 UT plants *(Astragalus hamiltonii*, *Eriogonum soredium*, *Lepidium ostleri*, *Penstemon flowersii*, *Trifolium friscanum*) from 206 species petition	12–month petition finding
2 CO plants *(Astragalus microcymbus*, *Astragalus schmolliae*) from 206 species petition	12–month petition finding
5 WY plants *(Abronia ammophila*, *Agrostis* rossiae, *Astragalus proimanthus*, *Boechere (Arabis*) *pusilla*, *Penstemon gibbensii*) from 206 species petition	12–month petition finding
Leatherside chub (from 206 species petition)	12–month petition finding

TABLE 7. ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
Frigid ambersnail (from 206 species petition)	12–month petition finding
Gopher tortoise – eastern population	12–month petition finding
Wrights marsh thistle	12–month petition finding
67 of 475 southwest species	12–month petition finding
Grand Canyon scorpion (from 475 species petition)	12–month petition finding
Anacroneuria wipukupa (a stonefly from 475 species petition)	12–month petition finding
Rattlesnake-master borer moth (from 475 species petition)	12–month petition finding
3 Texas moths *(Ursia furtiva*, *Sphingicampa blanchardi*, *Agapema galbina*) (from 475 species petition)	12–month petition finding
2 Texas shiners *(Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12–month petition finding
3 South Arizona plants *(Erigeron piscaticus*, *Astragalus hypoxylus*, *Amoreuxia gonzalezii*) (from 475 species petition)	12–month petition finding
5 Central Texas mussel species (3 from 474 species petition)	12–month petition finding
14 parrots (foreign species)	12–month petition finding
Berry Cave salamander[1]	12–month petition finding
Striped Newt[1]	12–month petition finding
Fisher – Northern Rocky Mountain Range[1]	12–month petition finding
Mohave Ground Squirrel[1]	12–month petition finding
Puerto Rico Harlequin Butterfly	12–month petition finding
Western gull-billed tern	12–month petition finding
Ozark chinquapin *(Castanea pumila* var. *ozarkensis*)	12–month petition finding
HI yellow-faced bees	12–month petition finding
Giant Palouse earthworm	12–month petition finding
Whitebark pine	12–month petition finding
OK grass pink *(Calopogon oklahomensis)*[1]	12–month petition finding
Southeastern pop snowy plover & wintering pop. of piping plover[1]	90–day petition finding
Eagle Lake trout[1]	90–day petition finding
Smooth-billed ani[1]	90–day petition finding
Bay Springs salamander[1]	90–day petition finding
32 species of snails and slugs[1]	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding
Red knot *roselaari* subspecies	90–day petition finding
Peary caribou	90–day petition finding
Plains bison	90–day petition finding
Spring Mountains checkerspot butterfly	90–day petition finding
Spring pygmy sunfish	90–day petition finding
Bay skipper	90–day petition finding

TABLE 7. ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
Unsilvered fritillary	90–day petition finding
Texas kangaroo rat	90–day petition finding
Spot-tailed earless lizard	90–day petition finding
Eastern small-footed bat	90–day petition finding
Northern long-eared bat	90–day petition finding
Prairie chub	90–day petition finding
10 species of Great Basin butterfly	90–day petition finding
6 sand dune (scarab) beetles	90–day petition finding
Golden-winged warbler	90–day petition finding
Sand-verbena moth	90–day petition finding
404 Southeast species	90–day petition finding
High Priority Listing Actions[3]	
19 Oahu candidate species[3] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9)	Proposed listing
19 Maui-Nui candidate species[3] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Dune sagebrush lizard (formerly Sand dune lizard)[3] (LPN = 2)	Proposed listing
2 Arizona springsnails[3] *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
New Mexico springsnail[3] *(Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing
2 mussels[3] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing
2 mussels[3] (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel[3] (LPN = 2)	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[4]Partially funded with FY 2010 funds; also will be funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the ESA, these actions described above collectively constitute expeditious progress.

The upper Missouri River DPS of Arctic grayling will be added to the list of candidate species upon publication of this 12–month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the upper Missouri River DPS of Arctic grayling will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://*

www.regulations.gov and upon request from the Montana Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Montana Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 30, 2010

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–22038 Filed 9–7–10; 8:45 am]

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Federal Register

Wednesday,
September 8, 2010

Part III

The President

Proclamation 8554—National Childhood Obesity Awareness Month, 2010

Federal Register
Vol. 75, No. 173
Wednesday, September 8, 2010

Presidential Documents

Title 3—

The President

Proclamation 8554 of September 1, 2010

National Childhood Obesity Awareness Month, 2010

By the President of the United States of America

A Proclamation

One of the greatest responsibilities we have as a Nation is to safeguard the health and well-being of our children. We now face a national childhood obesity crisis, with nearly one in every three of America's children being overweight or obese. There are concrete steps we can take right away as concerned parents, caregivers, educators, loved ones, and a Nation to ensure that our children are able to live full and active lives. During National Childhood Obesity Awareness Month, I urge all Americans to take action to meet our national goal of solving the problem of childhood obesity within a generation.

Childhood obesity has been a growing problem for decades. While it has afflicted children across our country, certain Americans have been disproportionately affected. Particular racial and ethnic groups are more severely impacted, as are certain regions of the country. In addition, obesity can be influenced by a number of environmental and behavioral factors, including unhealthy eating patterns and too little physical activity at home and at school.

We must do more to halt and reverse this epidemic, as obesity can lead to severe and chronic health problems during childhood, adolescence and adulthood, including heart disease, diabetes, cancer, and asthma. Not only does excess weight adversely affect our children's well-being, but its associated health risks also impose great costs on families, our health care system, and our economy. Each year, nearly $150 billion are spent to treat obesity-related medical conditions. This is not the future to which we want to consign our children, and it is a burden our health care system cannot bear.

Earlier this year, the First Lady announced "Let's Move!"—an initiative to combat childhood obesity at every stage of a child's life. As President, I created a Task Force on Childhood Obesity to marshal the combined resources of the Federal Government to develop interagency solutions and make recommendations on how to respond to this crisis. The Task Force produced a report containing a comprehensive set of recommendations that will put our country on track for solving this pressing health issue and preventing it from threatening future generations.

The report outlines broad strategies to address childhood obesity, including providing healthier food in schools, ensuring access to healthy affordable food, increasing opportunities for physical activity, empowering parents and caregivers with better information about making healthy choices, and giving children a healthy start in life. I invite all Americans to visit LetsMove.gov to learn more about these recommendations and find additional information and resources on how to help children eat healthy and stay active.

The new landmark health care law, the Affordable Care Act (ACA), includes a number of important tools for fighting and reversing the rise of childhood obesity. All new health insurance plans will be required to cover both screenings for childhood obesity and counseling on nutrition and sustained weight loss, without charging any out of pocket costs. The ACA also requires

large restaurant and vending machine operators to provide visible nutritional information about the products they sell, enabling all Americans to make more informed choices about the foods they eat. As part of my Administration's comprehensive approach to combating this epidemic, the ACA includes millions in new funds to implement prevention activities nationwide that support recommendations of the Task Force on Childhood Obesity.

Our history shows that when we are united in our convictions, we can safeguard the health and safety of America's children for generations to come. When waves of American children were stricken with polio and disabled for life, we developed a nationwide immunization program that eradicated this crippling disease from our shores within a matter of decades. When we discovered that children were going to school hungry because their families could not afford nutritious meals, we created the National School Lunch Program. Today, this program feeds more than 30 million American children, often at little or no charge. When we work together, we can overcome any obstacle and protect our Nation's most precious resource—our children. As we take steps to turn around the epidemic of childhood obesity, I am confident that we will solve this problem together, and that we will solve it in a generation.

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 September 2010 as National Childhood Obesity Awareness Month. I encourage all Americans to take action by learning about and engaging in activities that promote healthy eating and greater physical activity by all of our Nation's children.

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

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
Star-Spangled Banner Commemorative Coin Act (Aug. 16, 2010; 124 Stat. 2490)

H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

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